United States Court of Appeals

for the Second Circuit

APPENDIX

75-7127

B 9/5

United States Court of Appeals

FOR THE SECOND CIRCUIT

JACKSON O. KING,

Plaintiff-Appellee,

—against—

DEUTSCHE DAMPFS-GES,

Defendant and Third-Party Plaintiff-Appellee-Appellant,

—against—

INTERNATIONAL TERMINAL OPERATING CO. INC. and COURT CARPENTRY & MARINE CONTRACTING COMPANY,

Third-Party Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

(Volume I—Pages 1a to 287a)

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UNITED STATES COURT OF APPEALS
FILED
MAR 24 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET — 68 CIVIL 3374 — 68 CIVIL 3374

2-21-75

NITED STATES DISTRICT COURT — JUDGE MOTLEY — Jury demand date: 8/22/68 — JUDGE MOTLEY

7-6-70 by 3rd pty, deft,

iv

Form No. 105 Rev.

TITLE OF CASE	ATTORNEYS
KSON O. KING VS UTSCHE DAMPFS-GES (Deft. & 3rd.pty.pltff.) TERNATIONAL TERMINAL OPERATING CO., INC. AND URT CARPENTRY & MARINE CONTRACTING CO. (THIRD -PARTY DEFT^S)	For plaintiff: Solomon J. Cohen 225 Broadway 10007 WO 2-6543 For defendant: Haight, Gardner, Poor & Havens (deft.& 3- ~~80 Broad St. NYC, NY 10004~~ 1 State St. Pl Di 4-6800 Plaza - 1-6704 Alexander, Ash, SChwartz & Cohen (Court 76 Beaver St., NYC (Carpentry & Mari 821 SECOND AVE - NYC

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
S. 5 mailed X	Clerk		12/6/68	A Cohen	15 —	
			5/23/68	U S Marshal		15 —
S. 6 mailed ✓	Marshal					
asis of Action: Pltf. injures	Docket fee					
n performance of duties 200,000.	Witness fees					
ction arose at:	Depositions					
				A		

V

DATE	PROCEEDINGS	Date Order Judgment N
.22-68	Filed complaint and issued summons.	
.19-68	Filed summons and return, served Deutsche Dampfs.G.E.S.by Mr. Izakson of F.W.Hartman & Co. 8/27/68.	
27.69	Filed Defts notice of appearance.	HGP&N
11-69-	Filed defts. answer and interrogs.	
.11-69-	Filed defts. Notice of Examination before Trial on 9-10-69 attached affdvt. og mailing	
16-69	Filed pltff's answer to interrogs.	
.16-69	Filed consent & order that deft. is permitted to make International Terminal Operating Co., & Court Carpentry & Marine Contracting Co., third-party defts. in this action & the same is hereby granted.--Frankel,J.	
. 2-69	Filed deft's & 3rd.pty. pltff's third party complaint, & issued 3rd.pty. summons.	
.27-69	Filed third party summons and return--served International Terminal Operating Co. by Mr. Nolan on 10-7-69; served Court Carpentry & Marine Cont. Co. by Mr. Anadio on 10-7-69.	
19-69	Filed 3rd.pty. deft's notice to take deposition of pltff. & 3rd.pty.pltff. on 12-23-69.	
19-69	Filed 3rd.pty. deft.'s (International Terminal) ANSWER TO COMPLAINT.	F&N.
11-70	Filed defts. and third party pltff's answers to interrogs.	
22-70	Filed deft. and third party pltff's interrogs.to 3rd party deft.	
.8-70	Filed 3rd pty. deft.ANSWER to 3rd pty.complaint and counterclaims.	AAS&C
.12-70	Filed pltff's NOTE OF ISSUE and statement of readiness.	
.17-70	Filed 3rd party deft's objections to NOTE OF ISSUE.	
.17-70	Filed stip and order that time of deft.and third party pltff. to object,answer or move to interrogs. is extended to 7-20-70.So Ordered--Lasker, J.	
.6-70	Filed 3rd party deft.International Terminal ANSWER to cross claim and jury demand.	F&N
13-70	Filed REPLY to counterclaim	
15-70	Filed stip & order extending deft's time to ans interrogs - Croake,J	
.18-70	Filed stip and order that time of deft.and third party pltff to object,answer or move to interrogs. is extended to 9-14-70. So Ordered--Frankel, J.	
.10-70	Filed deft.and third party pltff's answers to interrogs.	
.15-70	Filed memo.endorsed on objections filed 6-17-70--Motion withdrawn. T/C So.Ordered--Mansfield, J. m/n	
.28-70	Filed order pursuant to calendar rules 6 & 13. Sugarman,CH.J.	
30-70	Filed pltff's designation of trial counsel	
6 70	Filed deft's & 3rd pty pltff's designation of trial counsel.	
14 71	Filed 3rd pty deft's(Inter'l Terminal) answer to interrogs	
24-71	Filed 3rd pty deft's " " designation of trial counsel.	
5-71	Filed 3rd pty. deft Court Carpentry & Marine Contracting Co. pre trial memorandum	
5-71	Filed third party deft International Terminal Operating Co. pre trial memorandum	
5-71	Filed deft-3rd pty. pltff pre trial memorandum	
5-71	Filed pltff's pre trial memorandum	
5-71	Filed Consent pre trialorder-McGohey,J.	
20-72	Filed pltff's notice to produce to 3rd pty. deft Court Carpentry & Marine Contracting	
-73	Filed MEMO- END. on pre-trial order dtd 10-5-71. Trial May21,1973. Trial date may be moved up to April 73. MOTLEY,J. (mn)	
29-73	Filed deft & 3rd.pty.pltff. notice of motion Re: counsel fees .	
.29-73	Filed deft's & 3rd.pty.pltff's trial memorandum.	
1-73	Filed deft & third party pltffs Preliminary requests to charge jury.	
-14-73	Filed memo endorsed on notice for a separate trial for counsel fees, May 29,1973,etc.,the within motion is deferred until time of trial,So Ord. McGohey,J.m/n	

(CONT'D ON NEXT PAGE

B

3374 JACKSON O. KING- vs- DEUTSCHE DAMPFS- GES

CIVIL DOCKET (PAGE # 3) vi

JUDGE MOTLEY

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
. 31-73	Before Motley, J. Jury trial begun. Third-pty deft. Court Carpentry and Marine Contracting Co. motion for severance granted. Deft. International Terminal Co., Inc. severed by the Court's own motion.	
v. 1-73	Trial con't and concluded. Special questions submitted to Jury. Jury verdict for Pltff. in the amount of $15,000, against the deft. Deutche Dampfs-GES.	
,9-73	Filed pltff's memorandum in support of post verdict motions	
v. 13-73	Filed affdvt. of deft. and third-pty pltff, by Thomas F. Molanphy and a notice of motion for an order granting deft. a judgment in its favor as indicated. Ret. 11-29-73.	
Nov 14-73	Filed defts memorandum of law in support of its post-trial motions.	
Nov 14-73	Filed defts memorandum of law in support of its post trial motions.	
Nov 14-73	Filed defts memorandum of law in support of its post trial motions.	
Nov 14-73	Filed defts memorandum in opposition to pltffs post trial motions.	
ov. 26-73	Filed deft's supplemental memorandum of law in support of its motion for judgment, notwithstanding the verdict.	
ov. 26-73	Filed deft. and third-pty pltff's affdvt. of Thomas F. Molanphy in reply to the answering affdvt. of Benjamin J. Sergi, submitted in opposition to deft: and third-pty pltff's post-trial motion.	
. 4-73	Filed transcript of record of proceedings, dated 10/31/73	
. 5-74	Filed deft. and third-pty pltff's affdvt. of Thomas F. Molanphy in further support of deft. and third-pty pltff's motion for judgment to dismiss.	
18-74	Filed Memorandum-Opinion # 40329- and Order- Unless the parties waive their right to a jury trial in writing no later than 6-26-74, the unseaworthiness claim will be tried to a jury. In the event that a jury trial is waived, the court will decide the unseaworthiness and damages issues on the basis of the record of the previous trial, etc. as indicated. In view of the court's disposition of the negligence claim, pltff's motion to set aside the finding of contributory negligence is denied. So ordered- MOTLEY, J. (mailed notice)	
July 24-74	Filed true copy of USCA order- petition for a writ of mandamus is denied. (m/n)	
uly 25-74	Filed transcript of record of proceedings dated 10-31-73	
Aug. 8-74	Filed deft. & third-pty pltff's affdvt. of Thomas H. Molanphy and notice of motion for an order pursuant to Rule 42 (a) to consolidate for all purposes. Ret. 8-21-74	
Aug. 8-74	Filed deft. and third-pty pltff's memorandum of law.	

(CONT'D ON NEXT SIDE--PAGE #4)

DATE	PROCEEDINGS	AMOUNT RECEIVED IN EMOLUMENT RETURNS	
29-74	Filed memo endorsed on motion filed 8-8-74. The within motion to consolidate is granted and the case is hereby set for trial on Wednesday, 10-9-74 at 10:00 a.m. So ordered- MOTLEY, J.	(m/n)	
8-74	Pre-trial conference held J. MOTLEY, J.		
ct. 9-74	Before MOTLEY, J. Jury trial begun.		
10-74	trial cont'd		
11-74	trial con'd and concluded. Jury verdict for pltff. against deft. and third-pty. pltff. Jury verdict for deft. & third-pty pltff. against third-pty deft. International Terminal Operating Co. and Verdict for pltff. against third-pty deft. International Terminal Operating Co. in the amount of $ 42,900.		
21-74	Filed third-pty deft. Court Carpentry & Marine Contracting Co.'s notice of motion for an order dismissing the third-party complaint and directing the entry of judgment in favor of third-pty deft. Court Carpentry & Marine Contracting Co. and against the shipowner. Rct. 11-4-74		
21-74	Filed Memorandum on behalf of third-pty deft., Court Carpentry & Marine Contracting Co. in support of its motion to dismiss the 3rd-pty complaint and for entry of judgment in its favor based upon the jury verdict and in opposition to the shipowner's motion for a directed verdict/		
21-74	Filed Affidavit & Notice of Motion by deft and third party pltff for an order purs to Rule 50 of the FRCP. granting to the deft and third party pltff judgment in its favor etc. as indicated before Motley, J. on 11-5-74.		
21-74	Filed deft Post Trial memorandum statement.		
30-74	Filed pltff's memorandum in opposition to deft's post verdict motion.		
30-74	Filed pltff's affdvt. of Benjamin J. Sergi in opposition to deft's motion.		
30-74	Filed third-pty pltff's reply memorandum		
1-74	Filed third-pty deft., Court Carpentry & Marine Contracting Co. supplemental post-trial memorandum.		
6-74	Filed third-pty deft. International Terminal Operating Co., Inc. affdvt. of James D. Hockett in support of deft's motion notwithstanding thejury verdict on the issues of unseaworthiness.		
6-74	Filed third-pty deft. International Terminal Operating Co., Inc. post-trial memorandum.		
15-74	Filed transcript of record of proceedings, dated 11-1-73		
26-74	Filed memorandum-Opinion #41493- the motion of third-pty deft. Court Carpentry for an order dismissing the third-pty complaint and directing a verdict in its favor based upon the jury's favorable answer to the interrogatory as indicated, is denied . (CONT'd -- page #5)		

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(PAGE # 5)

Dr C. 110 Rev. Civil Docket Continuation

MOTLEY, J.

DATE	PROCEEDINGS
Nov.26-74	MEMORANDUM-OPINION # 41493 (CONT'D)- the motion of third-pty deft. ITO for an order dismissing the claim over as to it on the ground there was insufficient evidence to go to the jury on the issue of unseaworthiness and no evidence of its breach of its WAP is denied for the reasons as indicated. Submit order on five days' notice. MOTLEY, J. (n/n)
Dec. 3-74	Filed transcript of record of proceedings, dated 10-9, 10-11-74
Jan. 20-75	Filed Order and Judgment # 75,071- ordered that that motions for n.o.v. are denied- that the shipowner's motion against Court Carpentry for judgment n.o.v. is granted- that third-pty deft. Court Carpentry motions to dismiss th third-pty complaint and for directed verdict in its favor are denied- ordered that pltff. Jackson O. King have judgment against Deutsche Dampfs-GES, deft. third-pty pltff. in the sum of $42,900. together with costs and disbursement as taxed by the Clerk- that Deutsche Dampfs-GES, third-pty pltff. have judgment against International Terminal Operating Co. Inc. and Court Carpentr & Marine Contracting Co., third-pty defts., jointly and severally for the full amount of pltff's recovery and, in addition thereto, reasonable counsel fees, costs and disbursements, etc. MOTLEY, J. Judgment entered-1-22-75. Clerk (n/n)
Feb. 14-75	Filed third-pty deft. Court Carpentry & Marine Contracting Co. notice of appeal from Judgment entered on 1-22-75. Copies to: Sergi and Fetell; Solomon J. Cohen; Haight, Gardner, Poor & Havens and Fogarty, McLaughlin & Semel. Entered 2-18-75
Feb. 20-75	Filed third-pty deft. International Terminal Operating Co. Inc. notice of appeal from Judgment dated 1-16-75 and entered on 1-22-75. Copy to: Solomon J. Cohen,. Entered 2-21-75.
Feb. 21-75	Filed deft. & third-pty pltff. notice of appeal from Judgment entered on 1-22-75 as awards damages in favor of pltff. against deft. & third-pty pltff. Copies to: Sergi & Fetell, Esqs.; Solomon J. Cohen, Esq.; Fogarty, McLaughlin & Semel, Esqs. and Alexander, Ash, Schwartz & Cohen, Esqs. Entered- 2-24-75
Feb. 21-75	Filed Bond for the Undertaking for costs on appeal in the sum of $250.00- National Surety Corporation.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JACKSON O. KING,

Plaintiff,

vs.

DEUTSCHE DAMPFS-GES,

Defendant and Third-Party Plaintiff

vs.

INTERNATIONAL TERMINAL OPERATING CO., INC., and COUNTY CARPENTRY & MARINE CONTRACTING CO.,

Third-Party Defendants.

Before:
HON. CONSTANCE BAKER MOTLEY
District Judge
and a Jury.

68 Civ. 3374

New York, October 9, 10, 11, 1974

STENOGRAPHER'S MINUTES

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

JACKSON O. KING,

Plaintiff,

vs.

DEUTSCHE DAMPFS-GES,

68 Civ. 337

Defendant and Third-Party Plaintiff,

vs.

INTERNATIONAL TERMINAL OPERATING CO., INC. and COURT CARPENTRY & MARINE CONTRACTING CO.,

Third-Party Defendants.

- -x

B E F O R E :

HON. CONSTANCE BAKER MOTLEY,

District Judge

New York, New York
October 9, 1974 - 9:30 a.m.

A P P E A R A N C E S :

SERGI & FETELL, ESQS.,
Attorneys for Plaintiff
BY: BENJAMIN SERGI, ESQ., of Counsel

HAIGHT GARDNER POOR & HAVENS, ESQS.,
Attorneys for Defendant and Third-Party Plaintiff
BY: THOMAS HOLLANDIN, ESQ., of Counsel

APPEARANCES: (CONTINUED)

FOGARTY MC LAUGHLIN & SEMEL, ESQS.,
Attorneys for Third-Party Defendant
International Operating Co., Inc.,
BY: JAMES HOCKETT, ESQ., of Counsel

ALEXANDER ASH SCHWARTZ & COHEN, ESQS.,
Attorneys for Third-Party Defendant
Court Carpentry & Marine Contracting Co.,
BY: ALBERT TESTA, ESQ., of Counsel

* * *

(In open court.)

(A jury of twelve and two alternates were duly impaneled and sworn.)

THE COURT: Ladies and gentlemen, before the trial actually commences I would like to give you a few preliminary instructions.

At the end of the case, that is after all the evidence is in and after the lawyers have had an opportunity to sum up, I am going to instruct you as to the law applicable to this case.

As I have indicated, right now I am going to give you some preliminary instructions. The first is that during the course of the trial you have to pay careful attention to the testimony and other evidence as it comes in because as you know as jurors you are going to have the exclusive function of determining the disputed fact issues in this case.

3a-1

Obviously if you have not been paying attention, or if you have been falling asleep or letting your mind wander, you are not going to be able to perform that function very well.

As I indicated before, it's the purpose of the Court to afford all parties a fair and impartial trial. Obviously no one gets a fair trial before a jury when the jury has not been paying attention to the testimony and other evidence as it comes in. So the first instruction is to pay careful attention to the testimony and other evidence as it comes in.

The evidence in the case consists of three things. First, the testimony that you will hear from the witnesses who will take the witness stand right here before you, then the evidence in the case will consist of any exhibits which are actually received into evidence and then the evidence in the case will consist of any stipulations or agreements as to certain facts which need not be proved, but the lawyers enter into. Those three things are: Testimony, exhibits received in evidence and any stipulations or agreements as to certain facts.

We know that you can't pay attention indefinitely so that in addition to the usual luncheon recess each day at 1:.45 we will have an afternoon and a

morning recess so that you can relax and not have to concentrate, but while you are in the courtroom and testimony and other evidence is being received, please pay careful attention.

During the course of the trial it will be my responsibility to rule on motions and objections made by the lawyers in the case. These things should not concern you because theywill have to do with questions of law and my ruling on any motion or objection, therefore, should not be construed by you as any indication on the Court's part that the Court believes that any particular party's claim in this action is correct.

As the evidence comes in you will want to keep an open mind until you have heard the whole case. For that reason you must refrain from discussing the case among yourselves or with anyone else until you have finally retired to the jury to deliberate.

For that reason also you must refrain from discussing the case with your family or your friends when you go home at night, because if you do that, the first thing you know someone will start telling you about something they saw on television or read in the newspaper or saw in a magazine and although you do not intend it, those discussions are apt to influence your

judgment here, and as I have told you repeatedly now, your judgment in this case must be based solely upon the evidence presented in Court in this case and not on what somebody heard on the television or read in the newspaper. So please don't discuss the case among yourselves or with anyone else for any reason at any time. The only time you are permitted to discuss the case is when you have finally retired to the jury room to deliberate and that is after all the evidence is in, after all the lawyers made summations to you and after the Court has instructed you as to the law applicable to the case.

Should you have any questions relating to your comfort or convenience during this trial, if you will take them up with Mr. Alonzo, our clerk, he will try to answer them and if not he will take them up with me.

We are going to commence the trial with opening statements by the lawyers. I want to say that the purpose of an opening statement is to give the lawyers an opportunity to tell you what they hope to prove on this trial.

The reason I emphasize that is because statements made by the lawyers, whether in their opening statement, during the course of the trial or in their closing statement is not evidence. I just told you what

the evidence consists of, that is the testimony, exhibits and stipulations. However, you should listen carefully to the opening statement of each lawyer because that lawyer will tell you what he hopes to prove and it will help you to follow the evidence as it comes in because it can't come in all at one time, it will come in in bits and pieces, but if you have a kind of outline of what the evidence might show, then as it comes in you will be able to understand it better.

So at this time we are going to commence the trial with an opening statement by the plaintiff's counsel. He is going to tell you what he hopes to prove on this trial.

All right, Mr. Sergi, are you ready to proceed?

MR. SERGI: Yes, your Honor.

If it please the Court, the Honorable Judge Motley, Mr. Molanphy, Mr. Hockett, Mr. Testa, Honorable Madam Foreman, ladies and gentlemen:

As you know byway of introduction I represent Mr. Jackson King, who is the plaintiff in this action and who is bringing this claim against this shipowner for money damages to be compensated for personal injuries which he suffered as a result of what we claim

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to be an unseaworthy condition which will be spelled out by the Court as to the responsibility of the shipowner in this case.

Now, you have been given some general background by the Court and the attorneys and the parties have been introduced. May I refer to them again.

Mr. Molanphy represents the shipowner in this case, and that's the party that the plaintiff, Mr. Jackson, has made his claim against and no one else. However, the shipowner feels that if he is responsible to the plaintiff for the injuries that the plaintiff claims he suffered, then the shipowner is saying to the International Terminal Stevedoring Company, which is represented by Mr. Hockett -- they were the stevedoreswho loaded cargo aboard the vessel. The shipowner is saying if the condition which is responsible for the injuries to Mr. King came about because of the manner in which the stevedores did their work, then the shipowner wants to be indemnified for whatever the shipowner may have to pay, and he also makes a claim against Mr. King's employer, Court Carpentry, in this case, which is represented by Mr. Testa, claiming that if Mr. King or other employees of Court Carpentry did something that contributed to this accident which put the shipowner in responsibility, why the

he would like to get itback from Court Carpentry also. Now, that's spelling out the position of all the parties.

I tell you that because you must understand that all of them collectively are adverse to the plaintiff's position, because if the plaintiff doesn't recover then none of them have to worry about a thing.

Before I tell you what I intend to prove on behalf of this plaintiff, I think it terribly essential that I at least attempt to inform you of the various terms, the terminology that will be used by the witnesses in this case which you may not be familiar with. If you don't understand the language that's being used -- and I don't mean that they use peculiar language, but there are terms that may be used that you never heard before, so I will attempt to define some of them. If I don't define all of them, of course it's not because I don't want to, I just overlooked them and I will try to define them during the testimony. I am not trying to impress you that I am the only one in this courtroom that knows these terms, all the attorneys know them, but since I am the first speaker I am going to take the liberty of trying to define them myself.

I think you should also be told that the reason I stand here first is because I represent the

plaintiff and since the plaintiff is the one who is making the claim, he has the burden of proving what he says. That being the case in our judicial system, wisely so, they say, all right, Mr. Plaintiff, you go ahead and explain your position first and then the others will explain their position. Then you will see at the end of the trial it will be reversed. The plaintiff will have the last word, so all other counsel will address you first and then I will address you after all the testimony is in.

Now, getting to the terms, and if I am too simplistic please accept it in the terms and in the manner in which I am presenting it. I want to make sure that everyone understands.

Now, we are dealing with a plaintiff who is a marine carpenter. Now, the difference between a regular carpenter and a marine carpenter, is that marine carpenters work aboard ships and they do various work aboard ships.

You have got to differentiate this marine carpenter from the kind of carpenters that work as seamen aboard ships. They sail back and forth. Mr. King is not one of those. He is not a seaman. He is a marine carpenter. The work he does is when the vessel arrives in New York and takes cargo or freight aboard this ship,

in order to make sure that when the vessel leaves to go to a foreign port and it sails into rough seas possibly, that the cargo or the merchandise aboard that vessel is secured tightly so that it doesn't break loose and move about and possibly damage the cargo itself or damage the vessel. So Mr. King and marine carpenters come aboard and they secure the cargo. That is their job as marine carpenters. The reason they are called carpenters is because sometimes they use wood of various sizes to secure the cargo aboard, nailing it together, putting up fences or securing it somehow, because there are other measures and other methods also which are employed to secure cargo by these men and that will be referred to as "lashing". They use chains and cables and wires to secure it by tying it together or tying it to other apertures in the ship. So they will be lashing. Chocking is securing it with lumber or what-not. Those are the terms you will be hearing from the marine carpenters and that is their work and that is what Mr. King was employed to do aboard this ship.

The area in which they have to work is the area in which cargo or merchandise, if you will, or freight is placed aboard a vessel. If you will visualize a freighter as a floating warehouse, because that's what it

you store cargo and it's brought someplace and then it's removed or discharged.

The area in which the cargo is stored, stowed or placed is similar to this room, and it might be as large as this room. So the cargo is brought into this room and it's laid on the floor somehow and it's piled up. Of course we understand that you can't have an opening in the side of the ship. It's a ship that goes to sea. So you have to have an opening to bring this cargo in, so the opening is made in the ceiling and the opening is square, so they will refer to the opening as the square of the hatch.

There are many rooms or many hatches. Some of these vessels have four and some have six. In this particular case we will be concerned with one hatch or one room that will be number four.

Within the room itself, similar to buildings, there are rooms upon rooms within the confines of that hatch. There are different levels. The lowest level is the lower level or the lower hold. Then there are decks in between and they are referred to as 'tween decks. If there is more than one 'tween deck, the 'tween deck which is lowest will be called the lower 'tween deck, the one that is upper will be called the upper 'tween deck.

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The uppermost deck which is exposed to the weather or the elements is called the main deck or the weather deck.

Men who work aboard ships have various terms. In this case they will be referring to the first deck below the main deck. Instead of the upper 'tween deck they willcall it the shelter deck. I don't know why, but that's what they use. It's the shelter deck and that is the area we are going to be concerned with in this case, the very first deck below the main or open weather deck, the shelter deck.

For information purposes you will understand this cargo was brought aboard this vessel with various devices, winches, which are booms -- which are cranes, really, which are secured permanently to the vessel. Longshoremen operate these cranes and they bring the cargo from the dock and it's placed down in the hatch and the longshoremen, which are employees of the stevedore, in this case International Terminal or ITO, they brought the cargo aboard the freighter which was owned by the shipowner here and the cargo that was involved in this case was structural I-beam--steel I-beam.

Now, what is an I-beam? If you ever see the skeleton of a building whenever the building goes up all you see is the steel work. These are I-beams or H-beams.

If you look at them from the end, there is a flat piece on top and bottom and a piece that meets between the two of them. Now, that's the cargo that was placed upon the floor or deck of the shelter deck by ITO men and they covered the entire floor or deck of that particular area.

Placed upon those I-beams was further cargo placed there also by ITO men. They were large crane booms, such as you see on cranes that are putting up buildings, and they are the large arm that sticks out with a cable running up and down. Those are the booms. I don't know, there were three or four or five of those which were very large and they were placed upon the H-beams or I-beams.

The longshoremen employed by ITO then finished their work in that particular area and they went elsewhere. IT now became the job of the carpenters to come aboard and lash or secure these booms and keep them from knocking about when the vessel was at sea, so Mr. King and a co-worker was called upon by his boss, a Mr. Auletti and told to go into this particular hatch to secure the booms. They were going to do that with cables or chains.

So Mr. King, together with a co-worker, went down the ladder into this hatch in the shelter deck and when they arrived there they found there was booms to one side, booms on the other side and there was left an aisle

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in the center between the booms so that you could walk back and forth in that particular hatch.

However, the flooring was all I-beams or H-beams and the flat surface was left for walking and that's what they had to use, since there was no other way of walking along.

Now, our claim here is a very simple one, now that you understand the background. Mr. King states, and he will prove, that after he came down the ladder and he now turned about and he is standing on these steel beams, he had to walk to the end, to the end of these booms in order to get around them and secure them. Walking along the steel beams at that point was no problem, but when he got to the end of the booms and he started to go around the booms so that he could secure them, a space was left in placing the beams on the floor between two beams unbeknown to him and unforeseen by him. He stepped around and as he stepped around his leg, right up to his knee, went into that space. That is our claim and that's what we intend to prove.

The Court already indicated to you and instructed you that the Court will give you the law in this case. You will make the decision as to the facts, the credibility of witnesses, as to what you feel really

prove the injuries. I am going to have medical proof here that Mr. King, having suffered the injury from the accident as I have just described it, sought medical attention and received medical attention for approximately two years from a Dr. Mario Tagliagambe. I mentioned the name before and that's the doctor who took care of Mr. King. I will prove to you that during that period of time he also saw other doctors who examined him for examination only. Dr. Smith examined him three or four times. Other doctors examined him. I will prove to you with proof that ultimately two years after the accident in 1970 Mr. King had to submit to an operation to remove cartilage and other bony parts from his knee because of the injuries sustained in this accident.

I will prove to you that of course he lost time from work because he could not work before the operation and after the operation and I will prove to you that he prematurely had to retire from working as a marine carpenter, all of which he has lost earnings for.

Proof will be in -- I will show you his earnings records and I have all of these exhibits in evidence. I know I can. There has been stipulations in consent to that. Then you will examine all of the testimony and all of the documents which are in evidence.

Those are promises that I make to you. Each and every statement I made I know I can prove and when I come back at the end of the case when I sum up I will point to you what I have proved and I will prove everything I said.

That's all I have to say at this time and I will come back again and indicate that the proof is in as I have indicated. Thank you.

THE COURT: Thank you, Mr. Sergi.

Mr. Molanphy, do you care to make an opening statement?

MR. MOLANPHY: Yes, your Honor.

MR. MOLANPHY: Your Honor, counsel, madam forelady, members of the jury:

As introduced by your Honor, my name is Molanphy and during the course of this case I will be representing the defendant and third-party defendant, the shipowner, which in this case is the Hansa Line. The Line in 1968 was the owner of a vessel known as the Trautenfels. The Trautenfels, as has been mentioned, is not a passenger liner like the Queen Mary, but a working freighter such as the many that you see tied up at the various piers in the Port of New York, engaged in the transportation of goods by water from various ports

of the world to, among others, and out of among others New York, New York harbor.

So it was that in mid-June of 1968 the Trautenfels came to Pier 3 at Erie Basin in Brooklyn. Now, the members of the crew of this ship don't do the loading or the unloading of this cargo. There are a number of expert stevedoring companies here in the Port of New York and on this particular occasion, a stevedoring company known as International Terminal Operating Company was engaged by the shipowner to perform the loading of cargo aboard the vessel, such as the cargo that was described to you by Mr. Sergi.

Now, the work is fairly specialized and so specialized that when it comes to the securing of cargo that has been stowed by the stevedoring company, you bring on a different company and they do the securing of that cargo, the lashing of the cargo, and that is the background, the setting in which this litigation arose when Mr. King, an employee of the lashing company sustains that he sustained injuries on board the vessel. Mr. King's sole claim is that of unseaworthiness of the Trautenfels. In turn, that claim of unseaworthiness is based solely on the improper storage of cargo aboard that vessel by International Terminal Operating Company.

Now, you ask where does the shipowner stand in this situation? The shipowner takes the position, number one, that we turned this work over to a stevedoring contractor, and an expert in his field. We feel he does a competent job and that the job was not unseaworthy under the circumstances of this particular case.

Secondly, we claim that Mr. King, a man of many, many years experience in this field of marine carpentry simply did not take proper precautions for his own safety so that in at least large part he himself was responsible for his own accident, either totally or in large part. That is the basis, then, of the two claims that are made by the shipowner on their third-party suits against the two contractors, namely as against International Terminal Operating Company -- we say that if you hold the ship responsible to Mr. King initially, then we should be entitled to be reimbursed by the party that created this situation of which he complains.

The second claim that we make as against Mr. King's employer, Court Carpentry, is a little bit more involved and it goes right to questions of law and I would prefer to leave that to Judge Motley.

Parenthetically, perhaps counsel, Mr. Sergi, made reference to certain legal principles. I think for

the sake of all of us that that is better left to Judge Motley, who will give all instructions pertaining to the law.

That, in a nutshell, is the shipowner's position in this particular case. We will all have a chance to come back at the end of the testimony to address you further and until then I would ask you all to keep an open mind. Thank you.

THE COURT: Thank you, Mr. Molanphy.

Mr. Hockett, do you care to make an opening statement on behalf of the stevedoring company?

MR. HOCKETT: Yes, your Honor.

If the Court please --

JUROR #4: Your Honor, may I speak to you privately for a moment?

THE COURT: Yes.

(Discussion off the record at the bench between the Court and Juror # 4.)

THE COURT: I am going to ask counsel to come to the bench.

(At the side bar.)

THE COURT: Do you want to repeat for the lawyers what you just said to me?

JUROR # 4: When the questions were asked I

wasn't aware of the injury involved and I believe the gentleman has suffered the same type of injury that my mother experienced about four years ago. She works for the Postal Department. She slipped on ice. She had torn a cartilage. No loss whatsoever. She missed time from work. She went back to work. A year later the cartilage started to grow and she had to be operated on. She lost 40 percent mobility on her leg. I feel because of this I would have sympathy towards the defendant. I didn't realize this when you were asking the questions.

MR. MOLANPHY: May I make a suggestion, your Honor?

THE COURT: Yes.

MR. MOLANPHY: That Mrs. Taubenhouse be now substituted by the alternate.

MR. HOCKETT: I would join with that.

MR. TESTA: Yes.

MR. SERGI: Yes, your Honor.

JUROR #4: I am awfully sorry.

(In open court.)

THE COURT: Juror #4 is excused and the Court will substitute alternate juror #1 in place of regular juror #4.

All right, Mr. Hockett.

MR. HOCKETT: If the Court please, fellow counsel, madam forelady, ladies and gentlemen of the jury:

At this juncture in the trial, before the proof has been presented to you it's my intention only to make a brief opening statement to give you some idea of what the position of ITO is. ITO, or International Terminal Operating Company as has been mentioned several times before, was the stevedore involved in the loading of the vessel on the day of plaintiff's alleged accident.

Now, the plaintiff has made the claim, as you are well aware now, against the shipowner only, not against the ITO corporation directly. As attorney for the ITO we join in what has been stated by the defendant third-party plaintiff, namely it's ITO's position that the ship involved was not in any way unseaworthy and certainly the stow, the cargo, the structural steel that has been mentioned was stowed in accordance with the custom, use and practices of the stevedoring trade and the stow was in every respect safe.

It's ITO's further contention that if the plaintiff did in fact sustain an injury, the injury was in no way ascribable to the activities of the stevedore. The stevedore rendered its function in a safe manner and

we hope to show this to your satisfaction, that they in fact did render the job that had to be done in a safe manner; that if the plaintiff was injured, it was because of his own carelessness and disregard for his own safety, as has been mentioned by the defendant shipowner. I think this will be brought out upon the testimony of various witnesses and of the exhibits and I feel, speaking on behalf of my client, that at the conclusion of the trial you will find that the ship was suitable and safe for purposes and for the job being done by the various contractors, Mr. King's employer as well as ITO, and I think you will find from the evidence that the ship was in fact safe, requiring a verdict returned in favor of the defendant shipowner against the plaintiff.

I thank you.

THE COURT: All right, Mr. Testa, do you care to make a statement on behalf of the Court Carpentry Company?

MR. TESTA: Yes, your Honor.

Your Honor, Mr. Sergi, Mr. Molanphy, Mr. Hockett and ladies and gentlemen of the jury:

I represent Court Carpentry and Marine Contracting Company, one of two third-party defendants in this case, and I stress the word third-party defendant because as

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Mr. Sergi pointed out to you, his client, Jackson O. King is solely and only suing the shipowner in this case because he says this particular ship, the Trautenfels, was in an unseaworthy condition due to the way certain I-beams or H-beams were stowed in this hatch. That in effect is case number one: It's a totally different case than the other cases involved here.

The shipowner says, "Our ship was not unseaworthy and we deny that we were at fault in any way, but if you ladies and gentlemen of the jury should decide in favor of Mr. King and decide to award him some money, we want that money back from ITO, Mr. Hockett's client, or from Court Carpentry, who is my client."

You just heard Mr. Hockett state his position in the case as far as ITO is concerned and it's my purpose in this opening statement to give the position of Court Carpentry. We were there for the sole purpose of securing -- that is lashing and securing this cargo after ITO had put these beams into this hatch. That's all we did in this case. We had nothing to do with putting the beams in the number 4 hatch in the first place. That was done by International Terminal Operating Company. We came on the ship as independent contractors for the purpose of lashing and securing the cargo after it was put

Listen carefully to what Mr. King has to say. Listen to any other witnesses that are produced on his behalf and keep in mind the various positions of the parties here, action number one being Mr. King's case against the shipowner and I would designate action number two as the shipowner's case against ITO and action nurber three is the shipowner's case against my client. These are three separate cases. I would only ask you at this time to keep an open mind, not to draw any judgments, not to come to any conclusions until after you heard all the testimony in this case and until after you heard Judge Motley tell you what the law is as it applies to the facts in this case. At the end of the case we get a chance to come back and talk to you again in summation and at that time the order will be reversed as Mr. Sergi indicated to you. I will talk to you first and Mr. Hockett second and Mr. Molanphy third and Mr. Sergi last and that is because Mr. King has the burden of proof on case number one, the shipowner has the burden of proof on his case against ITO and the shipowner also has the burden of proof on its case against my client, Court Carpentry.

If any of the parties in this case do not sustain their burden of proof, they are not entitled to a verdict at your hands. At the end of this case I am

on to the ship by ITO.

Now, you heard Mr. Sergi say what his proof is going to be. He is going to try and convince you, ladies and gentlemen, that this ship was unseaworthy because these beams were improperly stowed, and I want you to bear in mind throughout the course of this trial that my client, Court Carpentry, had nothing to do with stowing these beams on the ship. We were there solely for the purposes of lashing and securing the cargo. I want you to bear that in mind.

Now, as far as we are concerned our position is that we are not responsible for this condition. Obviously, we didn't create the condition in the first place. Our position is we are not responsible for this condition. It's the position of Court Carpentry that we did not do or fail to do anything which in any manner, shape or form contributed to the happening of this accident, and if you decide that Mr. King is entitled to some money from the shipowner, the defendant is not required to get money back from my client because we are not responsible for this accident and this is our position in this case and I want you to bear that in mind.

I want you to listen carefully to the testimony.

going to come back and talk to you and I am going to ask you to let my client out of this case but at the time being I just want you to concentrate on the testimony of the case and what the various positions of the parties are.

Thank you.

THE COURT: All right, at this time we are going to recess until 2:00 for lunch. The jury is excused until 2:00 for lunch. Please come back a few minutes before because we are going to begin promptly at 2:00.

(Jury not present.)

MR. SERGI: Your Honor, perhaps this would be a good time to introduce the exhibits which we agreed upon so that we don't have to take up the time of the Court later.

THE COURT: Introduce the exhibits?

MR. SERGI: Yes, all parties agreed to certain exhibits.

THE COURT: I think that should be done in the presence of the jury so they will know what exhibits are in. The last time I gather I got requests to charge from the plaintiff and the ship. Are there any requests to charge from the ITO or the Court Carpentry?

MR. TESTA: Yes, your Honor.

THE COURT: Hand them up. please.

Do you have any, Mr. Hockett?

MR. HOCKETT: Not at this time, your Honor.

THE COURT: I am taking them now, so may I suggest you bring them in later?

MR. HOCKETT: I will have to see if Mr. McLoughlin, who was the trial counsel in the last case, drew some up.

THE COURT: All right, give your opponents a copy.

MR. TESTA: Yes, I will.

THE COURT: Mr. Sergi, I gather you will rely on those you previously submitted?

MR. SERGI: Yes, to a great degree. Of course the allegation of negligence is removed and if we have any more additional requests to charge because of what may develop during the trial, your Honor, I respectfully request that I be permitted to submit additional supplemental requests.

THE COURT: All right.

Mr. Molanphy, you previously submitted requests to charge?

MR. MOLANPHY: Yes, I did, and I believe those requests at that time covered both indemnity actions as

against third-party defendants and to the extent that they deal with the claim of negligence, I would ask your Honor to disregard those.

(Luncheon recess.)

* * *

AFTERNOON SESSION

2:00 p.m.

(In open court, jury present.)

THE COURT: At this time, the plaintiff may commence by calling his first witness.

MR. SERGI: Your Honor, before I ask any questions of the first witness, I would like to offer into evidence certain exhibits.

THE COURT: Suppose we have the clerk swear the first witness and get that over with.

J A C K S O N K I N G , theplaintiff, called as a witness on his own behalf, having first been duly sworn, testified as follows:

MR. SERGI: All of the exhibits which I am about to offer have been consented and agreed to by all counsel, your Honor.

Plaintiff's Exhibit#1 is the Columbus Hospital record.

Plaintiff's Exhibit #2 is the earning records

from the New York Shipping Association reflecting the earning records of the plaintiff, Jackson King, for the years 1967 through 1972.

Exhibit #3 is the profile or the layout of the vessel Trautenfels.

Exhibit #4, which will require marking, is a photostatic copy of a page of the log of this vessel for the day in question and a translation of the log, inasmuch as the log is written in German.

(Plaintiff's Exhibit 4 marked for identification.)

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(Plaintiff's Exhibits 1 through 4 marked in evidence.)

DIRECT EXAMINATION

BY MR. SERGI:

Q Mr. Jackson, can you hear me?

A Yes, I can.

Q Would you keep your voice up as loud as mine so juror #6 can hear you also.

A Sure.

THE COURT: Excuse me just a moment.

MR. HOCKETT: If the Court please at this time I would like to move for the exclusion of any non-party fact witnesses from the courtroom.

THE COURT: Are there any witnesses in the

courtroom?

MR. SERGI: Yes, your Honor.

THE COURT: Mr. Clerk, would you show the witness the witness room.

MR. SERGI: May I proceed?

THE COURT: Mr. Sergi, do you mind moving that podium back beyond juror #6 so you would not obstruct her view?

MR. SERGI: Yes.

Q Mr. King, are you the plaintiff, the person who is bringing this action against the Hansa Line, the shipowner?

Do you understand my question?

A I beg your pardon?

Q I will try it again, Mr. King.

You are suing the shipowner here for an accident that happened to you, is that right?

A That's right.

Q That accident happened on the 18th of June, 1968?

A That's right.

Q Would you give us your date of birth, Mr. King?

A 1908, April 7.

Q Where were you born, Mr. King?

A Tennessee.

Q Did you receive any formal schooling? Did you go to school?

A Well, I went to school up to about the 5th or 6th grade.

Q The 5th or 6th grade.

And that was in Tennessee?

A Right.

Q After the 5th or 6th grade what did you do?

A Well, I farmed for a long time.

Q You farmed?

A Yes. For a long time.

MR. SERGI: Your Honor, if I repeat it's because I haven't heard it. I am not doing it for any other reason.

THE COURT: All right.

Q Did you do any other work other than farming while you were in Tennessee?

A Sure. I worked for the city.

Q You worked for the what?

A City.

Q City?

A Right.

Q Doing what?

A I worked for their light division, construction.

Q Construction work?

A I mean the gas division.

Q Did there come a time that you came to New York?

A Right. Yes, I did.

Q When did you come to New York?

A I come to New York in 1960.

Q Did you enter the armed services? Did you go into the service?

A Yes, I did.

Q When did you go into the service?

A I went in the service in 1942.

Q How long did you remain in the service?

A Two years, ten months and six days.

Q Were you in the Army?

A Right.

Q While you were in the service, while you were in the Army for that period of time did you suffer any injuries from shrapnel or wounds or the like?

A No, I didn't.

Q Were you honorably discharged?

A Yes, I was.

Q [illegible]

of work did you first start to do?

A I started working on the waterfront.

Q On the waterfront?

A As a carpenter.

Q As a marine carpenter?

A Right.

Q Wouldyou tell the Court and jury what does a marine carpenter do on the ship.

A Well, he secures heavy equipments. He lays down a lot of timber and stuff to put their irons on. You aren't supposed to put two iron things down next to each other. If you put two iron or steel things down next to each other you put wood down next to each and you secure some with wire and some with steel.

Q So it's your job as a marine carpenter to go aboard a ship and secure cargo?

A Right.

Q Sometimes you chock it with lumber?

A Right.

Q And sometimes you use chains, steel cables?

A Right.

Q And you secure them to each other or you secure them to parts of the ship so they don't move around?

Q That's what a marine carpenter's work is?

A That's right.

Q You say you started doing this in 1961?

A Yes, I did.

Q For whom did you start to work in 1961?

A Who did I start to work for?

Q Yes.

A Court Carpentry.

Q Court Carpentry, is that right?

A That's right.

Q Is that the same company you were working for when you had your accident?

A That's right.

Q From 1961 up until and through 1968 was Court Carpentry the only company that you worked for as a marine carpenter?

A Right.

Q Did you work for any other company?

A Well, maybe sometimes a day or two I did work for Lee and Palmer doing the same thing. Sometimes, maybe a day or two every other month or something like that, doing the same work.

Q When you worked for the Court Carpentry are you on a regular payroll, a weekly payroll, or do you work

per day?

A I work per day, the hour.

Q How are you told when and where to report for work?

A Y ou are told by your foreman.

Q How?

A Well --

Q Does he call you?

A Yes. He calls you at your house and tells you.

Q He calls you the night before?

A That's right. He tells you where to go.

Q And then when you work a ship, if you didn't finish the ship you keep working there until it's finished?

A Right.

Q If there is no ship then you wait until your boss or your foreman calls you by phone and then you come in, is that right?

A That's right.

Q From 1961 through 1968 working at Court Carpentry, did you ever have any accidents? Were you ever injured?

A Well, I had a little light injury, not nothing serious.

Q When was that?

A Oh, that must have been in or around about '66, I think.

Q That was about two years before this accident that we are talking about?

A Yes.

Q How did you hurt yourself then?

A A wrench slipped and I hit myself on my leg with the wrench.

Q Which leg?

A Yes. The ratchet slipped and I hit myself on the leg.

Q Which leg?

A The left leg.

Q Where on the left leg did you hit yourself with the wrench in 1966?

A On my knee.

Q Did you get any medical treatment? Did a doctor treat you?

A Yes. He treated me and I was out about three weeks.

Q Who was the doctor that treated you?

A Dr. Tag.

Q Dr. Tagliagambe?

A Yes.

Q You know him as Dr. Tag for short?

A Yes.

Q But his name is Dr. Tagliagambe.

After you went back to work after that accident did you have any other accidents up to 1968?

A No, I didn't.

Q After you lost about three weeks you say from that accident in 1966 did you lose any more work because of any injury?

A No, I didn't.

Q By the way, are you married, Mr. King?

A Yes, I am.

Q And you were married back in 1968?

A Sure, I was married then.

Q And you live with your wife now and you lived with your wife then?

A That's right.

Q In 1968, June 18th, you say you had an accident aboard a ship?

A That's right.

Q Will you tell us how you were told to report to work at that particular place at that time?

A I was told by my foreman.

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Q Who was your foreman?

A Andy Auletti.

Q Is there more than one Auletti?

A Yes. Johnny Auletti and Andy Auletti.

Q You said Andy Auletti -- one of the Aulettis anyway, called you and asked you to report for work and then when you report for work, do you report at Court Carpentry's office or do you report down at the dock?

A I report at the dock.

Q Was June 18, 1968, the day you had your accident, the first day that you worked on this ship or had you started there a day or two or so before?

A No. That was the first day we started on that ship.

Q That was the first day you reported on that ship?

A Yes.

Q When you reported for work with Court Carpentry, do you more or less work with the same men?

A Well, no. Part of the time you do and part of the time you don't.

Q [illegible] day, June 18, 1968 [illegible]

A [illegible]

Q Did you meet your foreman down there?

A Yes, I did.

Q Did he tell you what you were going to do that morning?

A Yes, he did.

Q What did he tell you to do that morning?

A Well, at that particular time we had been -- we just come out of another hatch.

Q Well, before coming to the time of the accident, what time did you report for work?

A 8:00.

Q Now, at 8:00 in the morning you met your foreman, Mr. Auletti?

A Right.

Q And he told you what you were going to do?

A That's right.

Q [illegible] the morning?

A To the front end of the ship, the front end of the ship.

Q Were there hatches at the front end of the ship?

A Yes, there are hatches.

Q How many hatches were there, do you remember?

If you don't remember, just say so.

A No, I don't remember.

Q Do you remember what number hatch you went to work in in the morning?

A I think it was number one. I ain't for sure.

Q When you came aboard were there any longshoremen working on that ship when you came aboard in the morning?

A We all started work together.

Q When you say all, the longshoremen started to work at the same time that the Court Carpentry men started to work?

A No. The longshoremen started to work before we started to work.

Q So when you got there they were already working?

A No. But they put the stuff in the hold before I got in the hold. In other words, they load it before we started to work on it.

Q So they had worked there the day before?

A I really don't know, to tell you the truth.

Q Nevertheless, at 8:00 in the morning when you went aboard ship, if you remember, were there any longshoremen on the ship at that morning?

A We all went upon the ship together.

Q Including the longshoremen?

A Well, I mean the longshoremen. Sometimes the ship comes in and it already has stuff on it and we have to go in the hold and lash it, but we all went on the ship together, the longshoremen.

Q Mr. King, the day you were hurt you reported to work at 8:00.

A Right.

Q And you went aboard the ship, right?

A Yes.

Q When you got aboard the ship you went aboard the ship with Court Carpentry people, is that right?

A That's right.

Q Were there any longshoremen on the ship when you got there at 8:00 in the morning?

A I guess --

Q If you don't remember, say so.

A I guess there was some there, but I didn't pay no attention to where they were working.

Q Okay.

Q You say you went to work at number one hatch in the morning?

A It was up above where I got hurt. It was number one or number two, I don't remember which.

Q How many of you went into that hatch,

number one or two or three, whatever?

A I think it must have been about four of us in there.

Q What work were you doing in that first hatch where you were working?

A We was securing cargo.

Q How were you securing it? What were you using?

A We was using cables.

Q Steel cables?

A Steel cables.

Q All right.

What kind of cargo were you securing in that first hatch you were working in?

A Well, let me see. I don't know just exactly.

Q Sometime that morning you were told to go to another hatch, is that right?

A That's right.

Q At about what time was that that you were told?

A About 10:15 or 10:30.

Q Who was it that told you to go to another hatch?

A Auletti.

Q Were you the only one that was told to go to the other hatch?

A Me and one more man.

Q Who was the other man?

A Perry.

Q Perry. Grover Perry?

A Grover Perry.

Q Which hatch were you told to go to?

A Then?

Q Yes.

A Number three.

Q You left number one or three and then went to the back of the ship, right, and you went to number four; that's where your accidents happened, is that right?

MR. MOLANPHY: I think this is grossly leading. The witness indicated he went to another hatch.

THE COURT: Yes. If he doesn't remember he doesn't remember.

A I think it was number three hatch. I can't be sure.

Q What were you going to do in this particular hatch?

A We were going to lash some beams, some booms on top of some beams.

Q Was it you and Mr. Perry who went over to this particular hatch?

A That's right.

Q Do you know if the foreman, Mr. Auletti, was with you at that particular time?

A He wasn't down in there.

Q He was not down in there?

A No.

Q Now, before you went down into the hatch, was the square of that hatch open?

A Well, it was the beams all over the bottom of the hatch.

Q Listen to me, Mr. King.

When you were still on the main deck and before you went down into the hatch, did you look down into the hatch through the square of the hatch? Doyou know what I mean?

A Oh, was it covered up any?

Q Yes.

A I don't remember whether the top was on it or not.

Q When you went into the hatch was it open?

A When I went down it was open, but I don't remember whether it was all the way open or not.

Q Before you went down it was open? The hatch was open, is that right?

A I don't know whether it was plumb open, but the

area where I went down was open. There was a place left open to go down, but I don't know whether it was partly covered up or not.

Q Now, in order to go down to the place where you were going to work you had to climb a ladder?

A Right.

Q Do you know whether the ladder was at the front of that hatch or at the back of the hatch? If you don't know say so.

A It was at the front end of the hatch.

Q The front of the hatch.

And you and Mr. Perry went down thatladder?

A Right.

Q Now, which deck were you going to work in?

A We was going to work in thenumber three deck.

Q Which deck?

A Oh, the shelter deck.

Q That was the first deck down, is that right?

A Right.

Q When you got off the ladder and you put your feet down on the cargo, what was down on the deck where you had your feet?

A It was steel beams down there.

Q Do you know what I-beams or H-beams are?

A They was H-beams I believe you call them.

Q What part of these H-beams could you see when you were standing there on top of them?

A Well, I was just looking at the top of them.

Q All right.

Approximately how wide was the top of each one of these beams?

A Well, I would imagine about 12 inches, as near as I can come to it.

Q Was that all over the floor? The entire deck was covered with the H-beams?

A Yes.

Q Was there anything on top of these H-beams?

A It was booms, steel booms on top of them.

Q Crane booms?

A Crane booms.

Q Shorecrane booms?

A Well, they was joints and they were loose. In other words, you have to take them loose. You can't put no whole beams in there. They come in sections.

Q The H-beams, which way were they lying on the deck or the floor of the hatch, from front to back or from side to side?

A Straight up and down like this.

Q Front to back, is that right?

A Straight up and down just like the ship.

Q From front to back and back to front?

A Right.

Q The booms, the crane booms, how were they lying on top of the beams, in the same direction as the beams?

A The same direction as the beams.

Q How many crane booms did you see down there or how many parts of the crane boom did you see down there?

A I really don't know.

Q Were there more than one?

A Yes.

Q Was there more than three?

A I would imagine so, because it was on each side.

Q About how many?

A It may have been four, five or six.

Q You say they were located on each side. On each side of what?

A On each side of the H-beams on top of them.

Q Was there any space between or any area between the cranes or the booms where you could walk?

A Well, I was going down between the small beams on the H-beams walking.

Q In the area in which you were walking was there an aisle or a place where you could walk?

A Yes. It was an aisle.

Q Was it similar, for example, to the aisle that's in this courtroom that runs to the back of the room?

A Yes. That's where I was on my way to, the back.

Q About how wide was the aisle, the area of the passageway?

A I guess something like this. Say about three feet.

Q Say about three feet?

A I guess so.

Q Could you see from where you were standing at the ladder all the way down to the other end of that hatch or room, all the way down that passageway or that aisle?

A Yes. I could see some, but I couldn't see too good. It wasn't as light as in here. It wasn't that light.

Q When you stepped off the ladder and you stepped on the flooring of H-beams did you look at the flooring of

the H-beams at the ladder?

A Yes. I caused myself to look where I was walking.

Q What did you see in regard to the H-beams at the point of the ladder where you started walking?

A It was all right.

Q Were there any spaces or spacings between any of the H-beams that were in the aisle or the passageway where you were going to walk?

A Well, where I was walking it seemed to be all right to me. I didn't see nothing wrong with it.

Q When you were walking, where was Mr. Perry?

A Mr. Perry was behind me.

Q Were you carrying anything at that time?

A I was carrying a roll of wire and two boxes of clips.

Q Where were you carrying the roll of wire?

A To the other end of the hatch.

Q How were you carrying it?

A I had to sling it on my shoulder.

Q Your right shoulder?

A Yes.

Q Did Mr. Perry have any equipment?

A I think he did. I don't know what he had. He

might have had some turn buckles or something.

Q Did you start walking down that aisle that we described that was between the boom cranes on either side?

A Yes, I did.

Q Did you have any trouble walking along that aisle?

A No.

Q There came a time when you had an accident, is that right?

A Right.

Q How far down that aisle or passageway did you go before you had an accident?

A I went on down to the end and I was turning to go to the side of the ship to lash the beams and I fell in the hole.

Q Excuse me. When you say you went down the aisle and you were making a turn to lash, which way did you turn; did you turn to your right or did you turn to your left?

A To the offshore side.

Q Now, the offshore side is the side of the ship that's away from the water, is that right?

A No. That's the side that's in the water.

Q In the water?

A Yes. That's the offshore side.

Q And the other side next to the dock -

A Is the inshore side.

Q And that's called the inshore side?

A That's right.

Q You say you were turning to your right and you were turning towards the offshore side?

A Yes.

Q Did you walk completely to the end of the boom cranes before you turned to the right?

A Yes.

Q At that time where was Perry?

A Perry was behind me.

Q What, if anything, happened to you when you turned to your right?

A When I turned to my right, when I noticed anything I done fell in that hole and Perry got me out.

Q Where was the hole?

A It was where I turned.

Q Yes, but was it in the floor, in the steel, where was the hole?

A The hole was between the wall and the beams.

Q Between the what?

A The wall of the ship and the beams.

Q It was between the beams?

A Yes.

MR. MOLANPHY: Your Honor, I don't think that's what the witness said at all.

THE COURT: Yes, repeat the answer, Mr. Reporter.

(Answer.)

Q You made a turn to your right, is that what you said?

A Yes.

Q How many steps did you take to the right before your foot went into a space?

A I guess one or two steps.

Q Was that still on the H-beam?

A Yes. That's where I fell through, the H-beam.

Q When your foot went into the space between the beams that you just said, in which way were you facing? Were you facing in the direction towards which you were going, were you facing towards thewall or the skin of the ship or were you facing towards back from where you came?

A I was going -- just like the ship is parked here, (indicating), I was going down like that, just like

the ship was parked in there going in the same direction, or the back of the ship.

Q Let me ask it again because I don't think you understood my question. Listen again, please.

You were walking from the front of the hatch to the back of the hatch?

A Yes, I was.

Q Now, you say that you turned to your right.

A Yes, I did.

Q When you turned to the right you are now going towards the skin or the side of the ship?

A Yes, I was.

Q When your foot went into the space, were you still walking towards the skin of the ship or had you turned and were facing towards the front of the ship?

A I was looking towards the skin of the ship.

Q What part of your body went into the space? What went into the space, Mr. King?

A My feet went in there down to my knee.

Q Was it both feet or one foot?

A One foot.

Q Which one?

A The left foot.

Q How far did it go?

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A It went as far as it can go. It hung up right here. (Indicating.)

MR. SERGI: Indicating the lower portion of the knee, your Honor.

A It couldn't go no further.

Q What did you do when your leg went into that space up to the kneecap?

A I think I called Perry. I think I did. He helpedme out of there.

Q Did you get out by yourself or did he help you out?

A He helped me out.

Q Then what did you do?

A We come back out the other end and come out the hatch.

Q You walked back to the ladder which you had used to get into the hatch?

A That's right.

Q Did you climb up the ladder?

A Yes, I did.

Q Did you climb up alone?

A Yes, I climbed up alone.

Q And you got up to the main deck?

A Yes, I did.

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Q Did you talk to anyone on the main deck about your accident?

A Yes. I talked to the superintendent, I talked to the --

Q Who was the superintendent?

A Thomas Genovese.

Q Do you know where Thomas Genovese is now?

A No, I don't. I don't never know where he is.

Q Did you speak to anyone else besides Mr. Genovese?

A Yes. I talked to Andy.

Q That's Andy Auletti?

A Yes.

Q Did you speak to anyone else?

A Well, the man from the ship, I guess, put a bandage on my leg.

Q Well, the man from the ship, did he ask you how you were hurt?

A Yes, he did.

Q Did you tell him how you were hurt?

A Yes.

Q Did you tell him where you were hurt?

A Yes, I did.

Q Did you give him your name?

Q That was the left knee and it was swollen?

A Yes.

Q After you received first aid did you leave the ship?

A Yes.

Did I leave the ship?

Q Yes.

A Yes, I did. I went to the doctor.

Q Who took you to the doctor?

A I think Tommy, the superintendent --

Q Genovese?

A Tony Genovese. Toddo.

Q They took you to what doctor?

A The doctor was in Tagliagambe's office. It wasn't Dr. Tag himself, it was another doctor.

Q That was Dr. Tagliagambe's office?

A Yes.

Q You saw another doctor in Dr. Tagliagambe's office?

A Yes.

Q On that first visit what, if anything, did the doctor in Dr. Tagliagambe's office do for you?

A Well, he bandaged my leg and put something or another on it.

Q How did he --

A He first cleaned it off, washed it off and put something or another on it and then he put a bandage on it.

Q Do you know whether he took any x-rays at that time, the first visit?

A No, he didn't take no x-rays on the first visit.

Q Did you walk out of your own accord or did you use any assistance or what?

A I hopped out myself.

Q Pardon?

A I drove out -- I hopped out myself.

Q You walked out yourself?

A Yes.

Q Where did you go from there?

A I went home.

Q How did you get home?

A My foreman had taken me home.

Q You live up in Yonkers?

A Yes. He carried me upstairs on his back.

Q He what?

A He carried me upstairs on his back. I couldn't walk when I got home.

A Yes, I did.

Q Did he understand you? Did he speak English?

A Yes, he could.

Q You say he gave you some first aid?

A Yes, he did.

Q Where did he do that?

A I was sitting down on something up there.

Q Right on the main deck?

A Yes. Right up there where I come out on the deck.

Q In order for him to give you first aid, did you remove your trousers or lift your trouser leg or what did you do?

A I pulled my trouser leg up.

Q When you pulled your trouser leg up and you were getting first aid from the person from the ship, did you look at your leg?

A Yes, I did.

Q What did you see?

A I seen blood and that it was swelled up.

Q Where was the blood coming from?

A It was coming out of my knee right along here. (Indicating.)

Q How many flights of stairs did he carry you up?

A Two.

Q Did you ever see Dr. Tagliagambe or the doctor in his office again?

A Yes. I seen them twice a week for a long time.

Q When you went back did you see Dr. Tagliagambe or Dr. Tag or did you see the other doctor?

A I seen Dr. Tag when I went back there.

Q Did Dr. Tag take any x-rays?

A Yes, he took x-rays.

Q Did you continue going to Dr. Tag for the entire 1968?

A I did.

Q And for the remainder of 1968 from June until the end of December did you return and do any work?

A I finally went back and tried to work a little bit. I would work a little bit and my leg would bother me and I quit and then went back to the doctor.

Q You went back and tried some work in September?

A Yes.

Q How many days did you work?

A I think I worked two days when I went back.

Q Why did you stop working after two days?

A My leg was bothering me too bad.

Q What do you mean it was bothering you?

A It was hurting.

Q Could you see anything about the knee? Did you look at it?

Was anything wrong with it that you could see?

A Yes. I could look at it and see something was wrong with it and feel it, too.

Q After you stopped working after two days in September did you go back and see Dr. Tagliagambe?

A Yes, I did.

Q What was Dr. Tagliagambe doing for you during all this time?

A He wasn't doing nothing too much but putting my leg in some hot water, warm water.

Q Whirlpool?

A Yes.

Q Did he ever give you a brace or a support for your knee?

A Yes. He gave me -- no, not till -- yes, he gave me a brace.

Q When did he do that?

A Oh, that was, oh, a good while after that.

Q Did he give you any crutches or canes or anything?

A Yes. I had crutches, but I didn't have no crutches until I got so I couldn't hardly walk and then he gave me some crutches.

Q Who gave you the crutches, Dr. Tag?

A Yes.

Q When did he give you the crutches, during 1968?

A Yes.

Q And did you continue to use the crutches?

A I used them until I got so I could walk with a stick.

Q How long altogether did you walk with a cane and a stick in 1968?

A Two, three months, something like that.

Q When was the next time you went back to work? Was it in 1968 or in 1969?

A I think I went back in 1969 and worked a while.

Q About how long did you work in 1969? About.

A I worked off and on, when I could work, maybe three or four months, four or five months, a day

Q During the time that you were working in 1969 were you still seeing Dr. Tagliagambe?

A Yes, I was.

Q How often were you seeing Dr. Tagliagambe through 1969?

A Once a week.

Q Pardon?

A Once a week.

Q Every week?

A Yes.

Q For all of 1969?

A Well, not -- maybe not all of it, but most of it.

Q So while you were working you were seeing Dr. Tagliagambe?

A Yes.

Q Was he giving you any treatment or just looking?

A The same thing.

Q Whirlpool?

A Yes, until I went to this other doctor.

Q Pardon?

A Until I went to another doctor and he recommended me for surgery.

Q Who was the other doctor?

A I can't think of his name right now. The one that is down here the time --

Q Was that Dr. Smith?

A Yes, Dr. Smith.

Q You also saw a Dr. Micheli?

A Yes, I went to Dr. Micheli.

Q And you went to several other doctors?

A Yes.

Q Did there come a time when Dr. Tagliagambe sent you to the hospital?

A Yes. That was after the guy recommended me for surgery.

Q And that was in 1970?

A Yes, it was.

Q You went to the hospital on February 11, 1970?

A Yes, right.

Q Was Dr. Tagliagambe still your doctor then?

A Yes, he was.

Q Did he operate on you at the Columbus Hospital?

A Yes, he did.

Q Do you know what that operation was?

A They said they operated on the arteries in my

leg. That's all I know.

Q Well, by the way, how were you feeling throughout 1969 while you were working and going to Dr. Tagliagambe?

A I was suffering.

Q What do you mean by suffering?

A Suffering with my leg.

Q Did you have any swelling or discoloration in your leg?

A Yes. It would swell whenever I put anything or wrap it up it would swell.

Q When you went to the hospital you were under general anesthesia, is that right, they knocked you completely out and then they operated?

A Yes, they did.

Q You don't know what they did?

A No, I don't.

Q When you woke up did you have any bandages over you?

A Sure.

Q Did you have any bandages on your foot -- your leg, rather?

A Yes.

Q And you stayed in the hospital for about 10 days?

A Yes, I did.

Q How long did you remain in bed without getting out of bed at all?

A Oh, three or four days.

Q When you left the hospital did you have any devices to help you walk like crutches or a cane or anything like that?

A Yes, I had to have crutches.

Q You left with crutches?

A Yes.

Q You went home and did you see Dr. Tagliagambe after that?

A Yes, I seen Dr. Tagliagambe for twice a week for a long time.

Q That's in 1970?

A Yes, it was.

Q For how long did you use the crutches in 1970?

A Oh, I would say about a couple of months.

Q Did you use a walking stick, too?

A Yes. After I put the crutches down I used a stick.

Q Did Dr. Tagliagambe give you a knee brace after that?

A Yes.

Q Will you describe what that knee brace looks like.

A Well, it has a joint in it. See, when I would walk my leg would flop. When I stand up like this it would flop that way and that would keep it from flopping back.

Q What did that brace look like? Was it made of canvas , steel or what?

A It was made of steel and it has got something to keep from rubbing your leg.

Q It had steel on the side?

A Yes.

Q With hinges?

A Yes.

Q And the rest was made of canvas ?

A Yes.

Q For how long did you wear it?

A I wore it for about three months.

Q In 1970 did you go back to work at all?

A I think I worked a little bit.

Q Then in 1971 did you try working?

A I think I worked a little then, occasionally.

Q When was the last time that you say you saw Dr. Tagliagambe for this leg?

A I really don't know the date that he dismissed me.

Q I c[illegible]t hear you.

A I don't know the date. I can't remember the date that he dismissed me.

Q After the hospital how much longer did he continue treating you?

A Oh, for about six or seven, eight months I reckon.

Q That would be in 1970?

A Yes.

Q All right, now, you worked in 1971. How was your leg then?

A It bothered me all the time.

Q What do you mean by it bothered you?

A It gave way. I fell off the ladder one day but I wasn't up far enough to hurt myself. I stepped up on the ladder and my leg give way and I fell off, but I wasn't up far enough to get hurt.

Q When was this?

A That was after I started back to work after it was operated on.

Q This was in 1971?

A Yes.

Q Were you suffering any pain when you went back to work in 1971?

A Yes. I suffer pain now.

Q Pardon?

A Yes, I did. I suffer pains now. It hurts most all the time.

Q What do you do when you feel pain in that leg?

A I take me an aspirin and so.

Q Anything else?

A There isn't much I can do except bathe it or take some aspirins or something like that.

Q Were you told what to do by any of the doctors when you feel pain in that leg?

A No.

Q Were you told to do any exercises?

A Yes.

MR. MOLANPHY: I object, your Honor. He just said that he wasn't told what to do.

A Yes, I did exercises.

MR. SERGI: I am trying to refresh his memory.

Q Did you say that you were told --

A Yes, I did as much as I could, but I can't

exercise it because I can't put no weight down on it like he wanted me to exercise and I finally quit doing it because it hurt.

Q Did you finally quit working altogether, Mr. Jackson King?

A I had to quit.

Q And that was in 1972?

A Right.

Q Why did you quit working?

A I quit work because I just wasn't able to work because my leg bothered me all the time.

Q The only part of your body that was hurt here was your left knee?

A That's right.

Q Why can't you go back and do what you were doing before since the only part of your body involved in this is your left knee?

A Because it bothers me too bad.

Q How does it bother you?

A It hurts and it gives way too much. I am scared to be climbing ladders.

Q You can't climb ladders?

A Yes. I could fall and break my neck.

Q This is 1974, Mr. King. How does your leg feel

now?

A It still bothers me now. It bothers me today.

Q How does it bother you now?

A It still gives way at times and it hurts. When it clouds up it hurts all the time. When no, if I don't have the pills to take, then I am in misery.

Q You are now how old, Mr. King?

A 66 years old.

Q Other than your knee, your left knee, how is your general health?

A Good.

Q If not for your left knee could you work today --

A Sure I could.

Q -- as a marine carpenter?

A Sure I could.

MR.MOLANPHY: Objection, your Honor.

THE COURT: Is there an objection to that question?

MR. MOLANPHY: Yes, your Honor.

THE COURT: What's the objection? I didn't hear it.

What was the objection?

MR. MOLANPHY: My objection was based on the

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grounds that this would call for some form of medical testimony.

MR. SERGI: I don't think so. He can testify as to whether he feels good enough to work except for his knee. He says he is in good general health, your Honor.

THE COURT: All right, if that's the purport of the question I will let him answer.

Q Does any other part of your body bother you, Mr. King, other than your left knee?

A No, it don't.

Q You can swing your arms, can't you?

A Yes, I can.

Q You can bend over?

A Yes, I can.

Q You can use the other leg all right?

A Yes, I can.

Q You aren't sick internally, you don't have any problem with your stomach, do you?

A No.

Q You don't have any heart problems, do you?

A No, I don't.

MR. SERGI: No further questions. Thank you, Mr. King.

THE COURT: All right, you may cross examine, Mr. Molanphy.

MR. MOLANPHY: Thank you, our Honor.

CROSS EXAMINATION

BY MR. MOLANPHY:

Q Mr. King, you just told us that you are now 66 years of age, is that correct?

A That's correct.

MR. SERGI: Excuse me, your Honor, I had a witness excluded from the courtroom. I know there is a witness in the courtroom who is an expert who may possibly be called in to testify in this case on behalf of one of the defendants. I now request that that witness be excused as was my witness.

THE COURT: All right. Is there a witness in the courtroom, a prospective witness?

MR. MOLANPHY: Not a fact witness. A prospective expert only.

MR. SERGI: That's who I would request your Honor to preclude so that he doesn't hear any of the testimony and if called upon--

THE COURT: All right, the witness will be excluded.

Q Mr. King, I believe you told us you are now

66 years of age, is that correct?

A That's right.

Q And the last time you worked as a marine carpenter was in 1972?

A I think so.

Q When you stopped working in 1972, Mr. King, was that on the advice of a doctor?

A No, it wasn't.

Q That was your own decision to stop?

A That was my decision.

Q Prior to 1972 for how long had you been a marine carpenter?

A I started to work down there in '61.

Q From '61 up until the time of your accident in '68 you had done nothing but marine carpentry work?

A No, not since I have been here.

Q You always worked aboard ships?

A Yes, I did.

Q Always lashing and securing cargo?

A Right.

Q And this was work aboard a variety of ships that came into the Port of New York?

A Right.

Q And it involved a variety of different

types of cargo?

A Right.

Q Each type of cargo would present its own different kind of working and walking surface?

A That's right.

MR. SERGI: Objection to the relevancy of the question, your Honor, without describing cargo as such and which is not the same as the circumstances of the cargo in this particular case. I don't see that the question is relevant.

MR. MOLANPHY: I think it has to do with the man's general background and experience.

THE COURT: Yes, all right, proceed.

Q General cargo, for example, Mr. King, that's not all the same size and all the same shape, is it?

A No, it's not.

Q It's not as if you took a liquid and filled an entire room where it was one solid mass?

A No.

MR. SERGI: Objection, your Honor, I don't see the relevancy of all this. If he is asking about the type of cargo that this witness was working on at the time of his accident I have no objection. He is now going into other areas of cargo which is not similar. It's irrelevant

and immaterial, your Honor.

THE COURT: The question to the witness is whether he has worked on other types of cargo other than the cargo involved in this case -- is that the question?

MR. MOLANPHY: Yes.

MR. SERGI: He said yes and now he is being specific, liquid cargo and other cargo and now I object to it.

THE COURT: I didn't understand the last question of filling a room with liquid.

MR. MOLANPHY: I will get to the point.

Q The general cargo you worked on would include boxes and crates and cartons and things of that nature?

A That's right.

Q And it would always be your job to secure certain pieces of cargo either to other pieces or to the ship itself in order that it doesn't shift and move?

A That's right.

Q Now, these surfaces that you walk and work on, Mr. King, they are generally not like a floor such as we have in the courtroom, are they?

A N o. Not like that.

Q You have to work on top of cargo that presents uneven surfaces at times, don't you?

A Yes.

Q And sometimes there are spaces such as there might be between two of these chairs?

A Yes.

THE COURT: Are we talking about the floor now?

MR.MOLANPHY: The walking surface that he has to work on top of.

Q Is that right, Mr. King?

A Yes.

Q On June 18th of 1968 you were employed by Court Carpentry and Marine Contracting Corporation, is that correct?

A That's right.

Q That was at Pier 3, Erie Basin?

A Right.

Q You went on board a ship at about 8:00 in the morning? Is that right?

A That's right.

Q Did you go in company with other men from Court Carpentry?

A Sure.

Q How many were in the group that went on board at 8:00?

A I really don't know.

Q Was it more than six?

A I don't know how many there were.

Q Was there a man in charge of the group that went on board?

A Andy Auletti is in charge of it.

Q And he also works for Court Carpentry?

A Right.

Q And he gives the orders to the men in your crew, is that right?

A Right.

Q Any complaints or objections that you have to make you make to Mr. Auletti, is that right?

A That's right.

Q Mr. Auletti sent you first to one of the forward hatches on the ship?

A That's right.

Q Did the whole group go or did only part of the group of carpenters go there?

A I really don't know. We don't all work just right together all the time. If there is more work on the ship, some work here and some work there.

Q Do you have any distinct recollection as to what it was like that morning?

A In the other hatches?

Q Yes.

A No. Not exactly. I couldn't tell you exactly what it was now to save my life.

Q Do you have or did you have a partner assigned to you on that particular day?

A You don't have no partner assigned to you.

Q You mentioned Mr. Perry.

A We was working in the hold that I got hurt, but you don't have a certain partner assigned to you.

Q In the morning at 8:00 when you went down into this other hatch first -- the other hatch incidentally was a room such as this, isn't it, with a lot of cargo in it?

A Yes, it had cargo in it.

Q Did you lash and secure cargo in that hatch?

A Sure.

Q What kind of cargo was it that you were securing then?

A I think it was steel pipes.

Q Pipes?

A Yes. But they wasn't straight pipes.

Q Did they cover the entire deck in that hatch?

A I think it was some tractors in there, too. I just don't know exactly what all was in there.

Q When you were walking and working in that other hatch that morning, do you remember what you were walking on?

MR. SERGI: Objection to the relevancy of what cargo he was working on in the other hatch, your Honor. We are concerned with the hatch in which he was hurt and the cargo in that area.

THE COURT: He can tell us if he remembers.

A I was walking on the floor of the ship.

Q Did you at any time in that other hatch have to walk on cargo in order to do your work?

A No, not in that hatch.

Q And then at approximately 10:30 or so, Mr. Auletti told you to leave that particular hatch, is that right?

A Yes. We had finished that hatch.

Q So that all the carpenters that were in there, did they leave all together?

A They all come out, but they didn't go down another hold with us.

Q When you came out it was then that Mr. Auletti told you and Mr. Parry to go into the other

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A Yes. We had finished that hatch.

Q So that all the carpenters that were in there, did they leave all together?

A They all come out, but they didn't go down another hold with us.

Q When you came out it was then that Mr. Auletti told you and Mr. Perry to go into the other

hatch, is that right?

A That's right.

Q Do you recall what number it was of the hatch that you were sent to after leaving the first hatch?

A I think it was number 3. I can't be sure.

Q Before you went down into hatch number 3, Mr. King, did Mr. Auletti go down into the hatch to look around?

A He didn't go down there with me. He might have been down there before I went down.

Q But was far as you know -- do you know whether he had been or not?

A I don't know whether he had been or not.

Q Do you know if any of the other supervisors from Court Carpentry had gone down into that hatch before you went down?

A No, I don't.

Q Mr. Auletti just told you and Mr. Perry to go down into the hatch?

A Yes.

Q Did he tell you what you were going to do?

A He told us to go down there and secure the beams that were laying on top of the other beams.

Q And you walked over to this hatch in order to

hatch, is that right?

A That's right.

Q Do you recall what number it was of the hatch that you were sent to after leaving the first hatch?

A I think it was number 3. I can't be sure.

Q Before you went down into hatch number 3, Mr. King, did Mr. Auletti go down into the hatch to look around?

A He didn't go down there with me. He might have been down there before I went down.

Q But was far as you know -- do you know whether he had been or not?

A I don't know whether he had been or not.

Q Do you know if any of the other supervisors from Court Carpentry had gone down into that hatch before you went down?

A No, I don't.

Q Mr. Auletti just told you and Mr. Perry to go down into the hatch?

A Yes.

Q Did he tell you what you were going to do?

A He told us to go down there and secure the beams that were laying on top of the other beams.

Q And you walked over to this hatch in order to

go down the ladder, is that right?

A Yes.

Q The hatch itself has a big opening on the top deck, doesn't it?

A Yes. I don't know whether it was fully opened or part of it was open or what.

Q But you could see down into the hatch?

A I could see pretty good.

Q You used a permanent straight ladder in order to get down into the hatch, is that right?

A Yes.

Q Excuse me?

A The ladder is made to the end of the hatch.

Q Is it secured to the end of the opening of the hatch?

A That's right. It's secured to the end of the hatch.

Q So in order to get on that ladder at least part of the hatch has to be opened?

A Yes, sure. I couldn't get down in there if it wasn't part of it that was opened.

Q This was at the forward end of this particular hatch?

A Yes, it was.

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go down the ladder, is that right?

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A Yes, sir. I couldn't get down in there if it wasn't part of it that was opened.

Q This was at the forward end of this particular hatch?

A Yes, it was.

Q You went down the ladder first?

A Yes, I did.

Q Now, before you went down the ladder could you see from the main deck as to what kind of cargo was down in there?

A Yes, I could see.

Q What did you see?

A I seen the beams and the beams on top of the beams.

Q What was on top of the beams?

A Well, it was some booms on top of the H-beams. There were steel booms.

Q The beams, were these H-beams that you described to Mr. Sergi, is that right, that you told Mr. Sergi about? They were about 12 inches wide on top, is that right?

A Yes. As near as I could guess, I didn't measure it.

Q About?

A Yes.

Q And they were flat on top?

A Yes.

Q About how deep were they? How thick?

A Well, they were, I would imagine, better than

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Q About?

A Yes.

Q And they were flat on top?

A Yes.

Q About how deep were they? How thick?

A Well, they were, I would imagine, better than

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2 feet high.

Q About how long, if you can recall?

A Oh, they are nearly as long as the hatch. I don't know how long that was.

Q Would that be around 60 feet?

A I don't know how many feet, but they were nearly as long as the hatch.

Q Nearly as long as the hatch?

A Yes.

Q Were they stowed or placed in the hatch side by side?

A Yes.

Q As far as you could see from where you were standing on deck, could you see any spaces, openings or anything like that?

A Well, for walking space, I see a space to walk in.

Q You saw it --

MR. MOLANPHY: I don't want to misstate what you said. Could you have that back?

THE COURT: Re-read the answer, Mr. Reporter.

(Record read.)

MR. MOLANPHY: I will withdraw the question, your Honor. It might have been a little confusing.

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THE COURT: Re-read the answer, Mr. Reporter.

(Record read.)

MR. MOLANPHY: I will withdraw the question, your Honor. It might have been a little confusing.

Q From where you stood on deck you could see these steel H-beams that ran the entire length of the hatch opening, is that right?

A Yes.

Q In the center of the hatch as you looked from the front to the back there was a walkway going the length of the hatch opening on top of these beams, is that right?

A Yes.

Q These cranes and boom parts that you mentioned, some of them were stowed on the side closer to the shore and some were stowed on the side closer to the water?

A There was some stowed on each side of where I had to walk.

Q But there weren't any that were stowed in this three foot wide passageway or about that amount?

A No, there wasn't.

Q When you got to the foot of the ladder and turned around you started to walk from one end of the hatch toward the other end of the hatch walking on this steel beam, is that right?

A Yes.

Q As you got to the foot of the ladder did you look down at where you were walking?

Q From where you stood on deck you could see these steel H-beams that ran the entire length of the hatch opening, is that right?

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A No, there wasn't.

Q When you got to the foot of the ladder and turned around you started to walk from one end of the hatch toward the other end of the hatch walking on this steel beam, is that right?

A Yes.

Q As you got to the foot of the ladder did you look down at where you were walking?

A I guess I did.

Q At any time after that did you look down to where you were placing your feet?

A I guess I did. I walked on down to the other end.

Q But during that time as you walked down toward the other end did you look at where you were placing your feet as you walked along?

A Well, yes, I guess I did. I didn't just look ever step I took; I had to look in front of me, too, because those beams were all up over my head sticking out.

Q How far had you gone walking along this passageway before you say you made a turn?

A I got to the end of the beams and I made a turn round the end of the beams.

Q About how far was that in terms of the length of the beams? Had you gone halfway along the beams toward the back of the hatch or further?

A I don't understand.

Q You said the beams were about as long as the hatch opening and maybe a little less.

A Well, it had to be a little less for me to walk down and I turned around.

Q Could you estimate approximately how far you

A I guess I did.

Q At any time after that did you look down to where you were placing your feet?

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A Well, it had to be a little less for me to walk down and I turned around.

Q Could you estimate approximately how far you

had walked along this passageway before you say you made your turn to the right?

A I had walked from where I went out on the ladder to where I walked down to the other end where I turned around to go towards the skin of the ship.

Q That's what I have in mind, Mr. King. Could you give us an estimate of just about how many feet you had walked along the length of these beams before you made a turn?

A No, I couldn't tell you how many feet. As I told you I walked from one end of the hatch to the other end of the hatch and I made a turn to go around to the right.

Q You say you made a turn to your right, then, at some point along the length of this passageway?

A Yes.

Q At the time you made your turn to the right, did you again look down to where you were placing your feet?

A Yes, I guess I caught myself looking, but I just didn't see the hole that I fell into.

Q How many steps did you take from the point where you turned to your right until the time that your foot went into the space?

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Q At the time you made your turn to the right, did you again look down to where you were placing your feet?

A Yes, I guess I caught myself looking, but I just didn't see the hole that I fell into.

Q How many steps did you take from the point where you turned to your right until the time that your foot went into the space?

A I guess one or two steps.

Q And you had already looked down at that area and you saw no space?

A What do you want me to say, that I looked down there to see the hole and stepped my leg down there and near killed myself ?

Q Mr. King, I don't want you to say anything.

A Itold you when I turned -- when I noticed anything, when I turned around the beam I done fell in the thing.

Q That's what I am asking you. Did you see this space in between the beams before your leg went into it?

A You know if I had seen it I wouldn't have stepped in it, Mister.

Q But you had looked down at this part of the stow after you made that turn to the right?

A If I had seen the place I wouldn't have slipped down there and ruined myself for life.

Q Mr. King, had you ever walked on steel beams stowed aboard ships before?

MR. SERGI: Objection, unless it's described --

A Yes.

A I guess one or two steps.

Q And you had already looked down at that area and you saw no space?

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Q Mr. King, had you ever walked on steel beams stowed aboard ships before?

MR. SERGI: Objection, unless it's described --

A Yes.

MR. SERGI: As this cargo in the very same cargo stowage.

Unless it's fully described and stowed in the same fashion as this cargo was stowed, it's irrelevant and immaterial.

THE COURT: He can ask him whether he ever walked on H-beams. Is that what they are called?

MR. SERGI: That were placed together or were in there with space. That's my objection. If he describes it as is described by this plaintiff, this witness who saw that cargo described. I object to the relevancy of any other cargo.

MR. MOLANPHY: Your Honor, we are talking in this case about --

THE COURT: Are you asking the witness whether he ever walked upon H-beams?

MR. MOLANPHY: Stowed in a vessel in the course of his work.

THE COURT: He can answer that.

A I told you yes.

Q Had you ever lashed cargo that was stowed on top of steel beams that themselves were stowed aboard a vessel?

A Yes.

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Q Had you ever lashed cargo that was stowed on top of steel beams that themselves were stowed aboard a vessel?

A Yes.

Q Mr. King, do you remember testifying on a prior occasion in connection with this case?

MR. SERGI: I'm sorry, I didn't hear you.

MR. MOLANPHY: Transcript page 81.

MR. SERGI: Your Honor, may we advise the jury --

THE COURT: Let's let the reporter read what he said since you didn't hear him.

(Record read.)

MR. SERGI: What I was going to ask, your Honor, is that the jury be advised that we have had --

THE COURT: Let's have this out of the presence of the jury.

(At the side bar.)

MR. SERGI: What I am asking your Honor is that the jury be advised that we had a trial before this so that a reference to a prior occasion is not left up in the air so that on the stand, that we have gone through one trial and we are reading from the transcript of a prior trial.

MR. MOLANPHY: I didn't know how your Honor wanted to handle that. That's why I said prior occasion.

THE COURT: That's the way to handle it.

Q Mr. King, do you remember testifying on a prior occasion in connection with this case?

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THE COURT: That's the way to handle it.

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MR. TESTA: Are you reading from the transcript of the trial or EBT?

MR. MURPHY: From the trial.

MR. TESTA: I thought he was reading from the EBT. He didn't say.

MR. SERGI: How should we handle it?

THE COURT: He said prior occasion in connection with this case.

MR. SERGI: Okay.

(In open court.)

Q Mr. King, do you remember testifying on a prior occasion in connection with this case --

A Yes.

Q -- at which time you were asked these questions and gave these answers, and I would like to read them to you, sir.

"Q Mr. King, on prior occasions had you ever loaded lashed cargo such as this on top of steel I-beams?

"A Not that I remember.

"Q Had you ever had occasion in the course of your work as a marine carpenter to walk on top of steel beams stowed aboard vessels?

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"A Not that I remember.

"Q Had you ever had occasion in the course of your work as a marine carpenter to walk on top of steel beams stowed aboard vessels?

"A Not that I know of."

Do you remember being asked those questions and giving those answers?

A No, I don't remember being asked those questions.

MR. MOLANPHY: Will counsel concede that he was so asked and gave those answers?

MR. SERGI: Yes.

Q Mr. King, you also testified in connection with this matter on one previous occasion when your attorney was present and a stenographer such as this gentleman took down the questions and answers, is that true?

MR. SERGI: May we have the dates, your Honor, of these references?

MR. MOLANPHY: Yes, I will give it.

Q That happened on September 10, 1969.

Do you remember being in my office, Mr. King, with your lawyer, and being asked questions and giving answers?

A Yes.

Q I questioned you for a total of 48 pages, I believe, of questions and answers about this particular case, didn't I?

A I don't know about how many pages, but you questioned me.

Do you remember being asked those questions and giving those answers?

A No, I don't remember being asked those questions.

MR. MOLANPHY: Will counsel concede that he was so asked and gave those answers?

MR. SERGI: Yes.

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MR. SERGI: May we have the dates, your Honor, of these references?

MR. MOLANPHY: Yes, I will give it.

Q That happened on September 10, 1969.

Do you remember being in my office, Mr. King, with your lawyer, and being asked questions and giving answers?

A Yes.

Q I questioned you for a total of 40 pages, I believe, of questions and answers about this particular case, didn't I?

A I don't know about how many pages, but you questioned me.

MR. SERGI: I will concede, your Honor, it was 48 pages of examination.

Q Did there come a time after the examination, Mr. King, that you were shown this examination, you read it and you signed it?

MR. SERGI: Objection. There are three questions there, your Honor, whether he read it, whether it was shown to him and whether he signed it.

MR. MOLANPHY: I will take it one at a time.

Q Did there come a time when you were shown this book containing the questions and answers?

MR. SERGI: May we show him the book that we are talking about, your Honor? The reference is in the abstract.

MR. MOLANPHY: Fine.

May I approach the witness, your Honor?

THE COURT: Yes, you may.

Q Mr. King, I will ask you, is that your signature on page 48-A of this transcript?

A Yes.

Q You read this before you signed it?

A No, I didn't read it.

Q Did your lawyer tell you what was in it?

A No, he didn't.

MR. SERGI: I will concede, your Honor, it was 48 pages of examination.

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MR. SERGI: Objection. There are three questions there, your Honor, whether he read it, whether it was shown to him and whether he signed it.

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May I approach the witness, your Honor?

THE COURT: Yes, you may.

Q Mr. King, I will ask you, is that your signature on page 48-A of this transcript?

A Yes.

Q You read this before you signed it?

A No, I didn't read it.

Q Did your lawyer tell you what was in it?

A No, he didn't.

Q Did you ask him what was in it?

A No, I didn't.

Q Did you ask to read it?

A No, I didn't.

Q Mr. King, at any time during the course of that testimony that you gave in my office on September 10, 1969, did you at any time tell me that as you walked along this passageway you suddenly took a turn to your right and then had your accident?

MR. SERGI: Objection to the form of the question. If he didn't ask this witness how or where he got hurt then he couldn't possibly have told him. Objection to the form of the question. It's a highly irregular and improper question. If he didn't ask him, your Honor, he couldn't have told him. Why not put specific questions to him? He has 48 pages of questions.

THE COURT: Yes, that is the thing to do. Read a question to the witness and ask him was he asked that question and did he give that answer.

MR. MOLANPHY: Your Honor, in order that this may be understood in context, may I read continuously from a number of these pages wherein the

Q Did you ask him what was in it?

A No, I didn't.

Q Did you ask to read it?

A No, I didn't.

Q Mr. King, at any time during the course of that testimony that you gave in my office on September 10, 1969, did you at any time tell me that as you walked along this passageway you suddenly took a turn to your right and then had your accident?

MR. SERGI: Objection to the form of the question. If he didn't ask this witness how or where he got hurt then he couldn't possibly have told him. Objection to the form of the question. It's a highly irregular and improper question. If he didn't ask him, your Honor, he couldn't have told him. Why not put specific questions to him? He has 40 pages of questions.

THE COURT: Yes, that is the thing to do. Read a question to the witness and ask him was he asked that question and did he give that answer.

MR. MOLANPHY: Your Honor, in order that this may be understood in context, may I read continuously from a number of these pages wherein the

entire incident was discussed between Mr. King and myself with his attorney present?

MR. SERGI: Objection, your Honor, unless he has specific questions relating to where Mr. King had his accident. All other questions are irrelevant. If he has a question in that examination wherein he asked Mr. King specificly where he stepped, then I object to all other questions. If he has that question in there, let him read it and put it to Mr. King.

THE COURT: Yes.

MR. MOLANPHY: Your Honor, may I read these questions so that it may be understood in the context in which the questions were asked?

THE COURT: You can read from that document, which is questions and answers put to this witness on a prior occasion, for the purpose of impeaching his credibility here.

Now, you first have to ask him a question which was put to him and say, "Were you asked that question and did you give this answer," which is contrary to some question put to him now and some answer given by him.

Now, if you don't have that, let's proceed.

MR. MOLANPHY: Your Honor, may I instead of doing it after each question and answer read a series of

them?

THE COURT: No.

MR. MOLANPHY: Your Honor, then to save time I would like to offer in evidence the transcript of the deposition of the plaintiff so that at some future time I may read it in context.

MR. SERGI: Objection, your Honor, unless what is in that examination before trial attacks the credibility of this witness and indicates that it impeaches this witness. It's not admissible just for the sake of introducing the entire examination.

THE COURT: Yes, it is.

MR. TESTA: I join in that objection.

THE COURT: Yes, it's admissible as between this plaintiff and that particular defendant.

Was Court Carpentry present when this deposition was taken?

MR. TESTA: No.

THE COURT: Was the stevedore present when this deposition was taken?

MR. HOCKETT: No, your Honor.

THE COURT: Then I will instruct the jury that this portion of the deposition of this witness taken before trial by the vessel owner can be read into evidence or

read to you by the shipowner's lawyer and that is binding as between the plaintiff and the shipowner that asked the questions. It's not binding on the other two parties who were not present at the time that deposition was taken.

MR. SERGI: What portions is counsel offering, your Honor?

THE COURT: All right, tell plaintiff's counsel what you are offering just for his benefit.

MR. SERGI: What pages are that?

MR. MOLANPHY: The pertinent parts for the moment are pages 25 through 32.

Q Mr. King, isn't it a fact that at the time your foot went down into a space you were still walking down this 3-foot wide passageway on the beams?

MR. SERGI: Objection, your Honor, that is not the testimony.

THE COURT: Read back the question, Mr. Reporter.

(Record read.)

MR. SERGI: Objection to the form of the question unless counsel can point out where Mr. King or anyone else has made a statement that he stepped in the space between beams other than where this witness has described.

THE COURT: Overruled.

MR. SERGI: He just can't take it out of context.

THE COURT: Overruled.

Q Isn't that the fact, Mr. King?

A Well, at the time you didn't ask me had I turned or was I --

THE COURT: Listen to the question. Read the question, Mr. Reporter. Listen to the question and try to answer the question.

(Question read.)

THE WITNESS: Was he speaking to me?

THE COURT: That's the question. Did you hear the question? He is reading you the question so you listen to the question again and try to answer the question.

All right, read the question again, Mr. Reporter.

(Question read.)

THE COURT: Do you understand the question?

THE WITNESS: Yes.

THE COURT: All right, you can answer it for Mr. Molanphy. That's his question to you.

A I didn't say I had turned the corner. You didn't even ask me had I turned at the end of the hatch when I stepped in the hole or fell in the hole.

MR. MOLANPHY: That's not what I am asking.

THE COURT: That's not responsive. He is now asking you, quite aside from anything he asked you before, whether it's not a fact that when you fell into the hole you were still walking down that middle aisle. That's what he is asking you now. He is not talking about anything he asked you before.

THE WITNESS: No, I turned the corner when I fell in the hole.

Q When you left the hatch, Mr. King, in doing so you climbed back up the ladder, is that correct, up top to the main deck?

A Yes, I did.

Q And then you spoke to Mr. Auletti?

A Yes.

Q And you received some first aid from one of the ship officers?

A Yes, I did.

Q You continued to work for awhile that day, didn't you?

A No. I didn't work nary another like that day.

Q When you ultimately did go back to work, Mr. King, did you go back to work as a marine carpenter?

A Yes.

Q With Court Carpentry?

A Yes, I did.

Q Doing the same type of work you were doing before you had your accident?

A Yes, I did.

MR. SERGI: Your Honor, may we inquire as to which particular time in which Mr. King returned to work, was it the first, third, fourth, fifth, the last time, because we have testimony he returned to work on several occasions. The reference now by counsel is a little confusing.

THE COURT: Let's clear it up now as to what time you are talking about.

MR. MOLANPHY: Did you want me to --

THE COURT: He is asking you to clarify the record as to what time you are talking about that this witness returned to work since he returned to work on several occasions.

MR. MOLANPHY: Respectfully, your Honor --

THE COURT: Do you want to read the question, Mr. Reporter?

MR. MOLANPHY: Respectfully I had concluded my cross examination and if Mr. Sergi wants --

THE COURT: I thought he was making an objection to the last question.

MR. MOLANPHY: The witness had already answered.

MR. SERGI: That's what I objected to, your Honor. Obviously he is satisfied with the answer. Leave it and I will take care of it on redirect.

THE COURT: All right. Now, Mr. Hockett, do you wish to cross examine this witness:

MR. HOCKETT: I have a few questions, Judge.

CROSS EXAMINATION

BY MR. HOCKETT:

Q Mr. King, if you can,tell us how many of these H-beams were down in that hatch at the time you went down to start lashing.

A I don't know.

Q I am not talking about the booms that were resting on top of the beams, I am asking you how many beams were there in that hatch.

A I do not know.

MR. SERGI: Objection. He answered he doesn't know. So no matter how many times he asks he doesn't

Q Were there more than five?

A I don't know.

MR. SERGI: Objection. He already answered "I don't know."

Q Tell me this, Mr. King, you say there is a passageway going from the forward part of the ship going down to the aft part of the ship in this hatch, is that so?

A That's right.

Q On either side of the passageway were these booms that you were to latch, right?

A Right.

Q As you were going down the passageway you were walking on the beams, the H-beams that we have been talking about, correct?

A Yes.

Q The space between the booms on either side was about three feet?

A Something like that.

Q How many beams were there for walking down this aisle, do you know that?

A No, I don't.

Q How wide did you say one of these beams was?

A I would just take a guess. I would say about

12 inches. It might have been wider than that and it might not have been quite that wide.

Q Would it be fair to say that approximately three beams would comprise this aisle going down from the front end to the back end of the ship?

A I don't know.

MR. SERGI: Objection, your Honor. He said he didn't know. It's purely argumentative. If he wants to multiply 12 inches for three beams for the amount of space, it's purely a question of mathematics, but he doesn't know and he said it.

THE COURT: May I hear the question, Mr. Reporter.

(Question read.)

THE COURT: All right, you can answer if you know.

A I really didn't count them, to tell you the truth.

Q When you got to the far end, the back end of the ship after walking down this aisle, you testified that you turned right, is that correct?

A Yes, I did.

Q And you were going to go towards the offshore side of the ship at that point, is that correct?

A Yes, I was. That's where I was trying to get to.

Q When you turned you were still walking on the surface of these beams, is that correct?

A Yes. I was on top of them beams.

Q As opposed to the steel deck, the floor, is that right?

A Yes.

Q When you turned to the right you looked down towards the right-hand side of the ship, to the skin of the ship, correct?

A Yes.

Q When you first turned, how much space was there from where you stood to the side of the skin of the ship, do you know that in terms of feet?

A Itwasn't very much.

Q Well, give me your best estimate.

A How wide it was I wouldn't know.

Q From where you were standing until the edge of the ship when you went to your right, was it more than two feet?

A I don't know. It was pretty narrow because I fell in the hole right after I made a turn, I didn't get to the skin.

Q Mr. King, was the distance between where I am standing to where you are sitting more or less from where you were standing to the skin of the ship after you made your turn?

A No. When I walked down the aisle I consider that about middleway of the ship. I don't know just how wide it was.

Q Mr. King, this aisle, okay, the three-feet aisle that you walked down after coming down to the hatch was right in the middle of the ship going from the front end of the ship going to the back end of the ship in this hatch, right?

A Yes.

Q It was right in the middle of the physical ship, correct?

A I would imagine.

Q More or less?

A Yes.

Q So that on the right-hand side and the left-hand side would be about equally distant to the skin from where you were standing, correct?

A Yes.

Q So after you proceeded down to the end of this aisle you then turned to your right, correct?

A Right.

Q My question is to you, at the point where you turned right, how far was it from where you were then standing to the skin of the ship?

A I just told you I didn't know.

MR. HOCKETT: If I may approach the witness for purposes of demonstration, Judge.

MR. SERGI: He has asked this witness three times and he said, "I don't know." Now, to make a demonstration and approach the witness is not going to help. If he doesn't know he doesn't know.

THE COURT: All right, you have spoken.

The question is unclear --

MR. HOCKETT: I will with --

THE COURT: Just a minute.

MR. HOCKETT: I'm sorry, Judge.

THE COURT: The question is unclear because by the question you have asked and the testimony it appears that there would be the skin of the ship ahead of him before he turned and the skin of the ship facing him as he turned. Now, which skin of the ship are you talking about? The question is confusing.

MR. HOCKETT: Okay, I will rephrase the question so that we can clear up that confusion.

Q Now, Mr. King, when you go down this aisle after coming down the ladder there is the offshore and the inshore side of the ship, right?

A Right.

Q On the right would be the offshore side as you are proceeding down this aisle, correct?

A Correct.

Q And the inshore side would be on your left, is that right?

A Right.

Q Sir?

A Right.

Q You were, as you were proceeding down this aisle, approximately the same distance from the offshore side of the ship as you were from the inshore side of the ship, correct?

A Right.

Q When you came to the end of this aisle, all right, you stopped -- did you stop at that point when you came to the end of the aisle before turning?

A Yes. I can't remember. I just remember walking down there and we got to go to the offshore side to lash -- or find something to lash to the beams.

Q When you came down to the end of the aisle

and before you made your turn, how far were you from the offshore side of the ship? That's my question.

A I don't know.

MR. SERGI: Objection. Excuse me, Mr. King, please. Objection, he did not say he went all the way down to the end of the aisle. He says he doesn't remember how far down that aisle he went and then he turned right. Now, for counsel to put in his question, "When you got to the end of the aisle," is improper because that's not what the testimony is and it's terribly important whether we know if he did go to the end of the aisle, if we can find out, or whether he turned before he got to the end of the aisle because the dimensions of that hatch may change, your Honor.

THE COURT: All right, what do you say about the plaintiff's counsel's suggestion that that was not the witness' testimony that he went all the way to the end of the aisle?

MR. HOCKETT: The plaintiff's counsel's suggestions are becoming -- well, never mind.

Q Mr. King --

THE COURT: Well, it's important.

MR. HOCKETT: I will again withdraw the question, your Honor.

THE COURT: If he is saying that that's his testimony, then we have to agree that that's his testimony. Do you say that that's the witness' testimony?

Q Mr. King, did you go to the very end of this aisle that you have described in direct examination?

A Yes.

Q I believe it was asked and I am going to ask it again.

How long was this aisle from the ladder to the end, the far end?

A I don't know how long it was. I don't know how long the end of that hatch was from one end to the other. I don't know how far it was to the skin of the ship.

Q Mr. King, in any event you walked down to the very end of the aisle that was provided there between the booms, right?

A Yes.

Q And then you turned right?

A Yes.

Q And you took two or three steps?

A I took one or two steps.

Q When something happened, correct?

A Yes.

Q When you were going down this aisle you were going along the length of the beams, correct?

A Yes.

Q So when you turned to the right you were going across the beams, is that so?

A Yes.

Q So that a new beam would start every 12 inches or so, the length of each beam, right?

A I guess so.

Q How many of these beams did you cross before something happened?

A I don't know. I told you I took one or two steps and that's it.

Q You don't know how many --

A That's the facts.

Q There were beams side by side, is that correct?

A Yes.

Q And you don't know how many beams you crossed over before youcame across this hole, right?

A No, I don't.

Q Mr. King, what kind of day was it? Was it

sunny, cloudy, do you recall that?

A I don't recall whether it was a plum-perfect day to tell you the truth or not. I couldn't tell you. I know it wasn't raining.

Q Mr. King, could you see where you were walking in this hold?

A I could see pretty well.

Q There was enough light for you to see?

A Pretty good.

Q Mr. King, did you look at this hole at any time or this opening after your accident?

A No. I didn't look at it after I got out. I wasn't hurting too bad. I didn't think about it.

Q And you didn't see it before your accident, is that right?

A No. Then I wouldn't have fell in.

Q You didn't see the hole before your accident, is that right?

A No, I didn't.

Q And you don't to this day know how long a hole it was?

A I can tell you, you can measure my knee and you can tell. My leg went down until her and it couldn't go no far.

Q Mr. King, then you do not now know the size of this hole, is that right?

THE COURT: Into which he had fallen?

MR. HOCKETT: Into which he fell.

A You can judge the size of my leg. This is as far as it can go.

THE COURT: That isn't the question. He asked you if you ever measured the hole. Is that the question?

MR. HOCKETT: Yes.

A No, I never did.

THE COURT: All right.

MR. HOCKETT: Your witness.

THE COURT: Mr. Testa, do you care to cross examine this witness?

MR. TESTA: I have one or two questions, your Honor.

CROSS EXAMINATION

BY MR. TESTA:

Q Mr. King, you were born on April 2, 1908, is that correct?

A That's right.

Q On the date of this accident, then, you were 60 years old, is that correct?

A That's right.

Q I believe you testified that the longshoremen, the men who worked for International Terminal Operating Company, had put these steel beams in the hatch, is that correct?

MR. HOCKETT: I am going to object. I don't think he has actual knowledge of who did it.

A The longshoremen don't put them in. I mean -- what did you call them?

THE COURT: Just a minute now. You are asking this witness whether he knows of his own knowledge that these beams were put there by the International Terminal Operating Company; is that the question of this witness?

MR. TESTA: That's right, your Honor.

THE COURT: Do you know that as a fact; that they put these beams there?

THE WITNESS: I don't know who put them there.

THE COURT: All right.

Q In any event, they were there when you went aboard this ship.

A I don't know that. I was working on board the other end of the ship.

Q Mr. King, when you went down into the hold the steel beams were in the hold, weren't they?

A They were there by then.

Q And you didn't put them there, did you?

A No.

Q No other employee of Court Carpentry put them there either, did they?

A No, they didn't.

Q In any event, the hatch that you went into, it was either the number 3 or 4 hatch, was open at the time and you went down the ladder, is thatcorrect?

A Correct.

Q And you didn't notice anything unusual about the way those beams were stowed at the time you went into the hatch, did you?

A No, I didn't.

Q Now, your purpose in going into this hatch was to lash or secure the cargo that was in the hatch, isn't that correct?

A That's correct.

Q And you were carrying a roll of wire in order to do that lashing or securing?

A Yes, I was.

Q But you never got to do that? Your accident

happened before you were able to do any lashing or securing?

A That's right.

Q If I understand your prior testimony correctly you had no difficulty in walking down the complete length of that aisle right up to the very end.

A No.

Q It was only after you made the right turn that you had the accident?

A That's right.

Q I believe you testified that after having seen Dr. Tagliagambe you tried to go back to work in September of 1968.

A Yes. I tried. I went back and tried to work a bunch of times, several times. I can't even count them.

Q That was the first time you tried to go back to work?

A Yes.

Q How long did you work that first time?

A Two days.

Q Then you went back to work again in 1969, the following year?

A Yes.

Q That time you worked two or three months, is that right?

A Yes. Off and on.

Q Did you work for anybody else other than Court Carpentry in 1969?

A No, I didn't.

Q Did you work longer than two or three months in 1969?

A I doubt it. I doubt I worked any longer than that.

Q Do you know how much money you made in 1969?

A I worked off and on so much I don't know exactly how much money I made.

MR. TESTA: I didn't hear that.

THE COURT: Read back the answer, Mr. Reporter.

(Answer read.)

Q Did you file income tax returns?

A For 1969?

Q Yes, I did.

Q I believe you said in addition to Dr. Tagliagambe you saw Dr. Smith?

A Right.

Q Did you see him once or more than once?

A I went to Dr. Smith three or four times, I think.

Q What year was that that you saw Dr. Smith three or four times?

A It was the same year I had the operation.

Q 1970?

A Yes.

Q Did you see him before or after the operation?

A I seen him before the operation.

Q Dr. Smith I am talking about.

A That's right.

Q You saw him four times before they operated?

A I say I saw him before the operation.

Q What I am trying to find out is of the four times you saw Dr. Smith, how many times of those four were before the operation and how many times were after the operation?

A I don't think I went to him after the operation, I went to Dr. Tag.

Q So is it correct to say that you saw Dr. Smith before your operation by Dr. Tagliagambe in 1970?

A Yes.

Q Is that right?

A Yes.

Q When was the last time you saw Dr. Smith?

A I don't know the date. Oh, it wasn't but two or three weeks, I think, before the operation.

Q Was the last time you saw Dr. Smith sometime in 1969, then?

A The last time I saw him -- I don't remember exactly, but he recommended for the surgeon.

Q Don't tell me what he recommended. I am only asking when was the last time you saw Dr. Smith.

A I don't know, to tell you the truth. I didn't put it down.

Q But in any event it was before February of 1970, is that correct?

A Yes, it was before the operation.

Q Yes.

Have you seen any other doctor other than Dr. Tagliagambe since you had the operation in February of 1970?

A No, I haven't.

Q Now, then, you went back to work in 1970 and also in 1971, I believe.

A Yes.

Q How long did you work in 1970?

A I really don't know. I worked so piecemeal. I really don't know how much I worked.

Q Do you know how much money you made in 1970?

A No, I don't.

Q Did you file an income tax return for that year?

A Yes.

MR. SERGI: Your Honor, I must object to this. We have in evidence, with consent of all counsel, all the earning records of Mr. King through the years 1967 to 1972 which is available to all of the jurors and I don't know why he keeps asking Mr. King what his earnings are.

MR. TESTA: I think it's a fair question, your Honor.

THE COURT: If he can remember.

MR. TESTA: If he can remember.

THE COURT: If he can't remember, he just has to say, "I don't remember."

Q Can you remember, Mr. King?

A How much I made?

Q Yes, in 1970.

A No, I don't.

Q Or in 1971?

A No.

Q When was the last time you did any work of any kind?

A It must have been in '72 or '71.

Q 1972?

A I think so.

Q Now, in 1972 you were 64 years old, were you not, Mr. King?

A Yes.

Q Were you eligible to retire at that time, in 1972 at age 64?

A I beg your pardon?

Q I said were you eligible to retire in 1972 when you were 64 years old?

MR. SERGI: Retire from what and by what? What kind of retirement is counsel speaking of?

A I was eligible for social security.

MR. SERGI: Please wait.

What type of retirement is counsel speaking of?

THE COURT: Clarify the question.

Q Did you belong to a union, Mr. King?

A Yes, I did.

Q What union did you belong to?

A I belonged to the union that all the other longshoremen belonged to, when I was working there.

Q Were you eligible to retire when you were 64 years old under that union's retirement plan?

A No, I wasn't.

Q Did you in fact retire when you were 64 years old in 1972, Mr. King?

A I quit working and started drawing social security.

Q Did you put in your retirement papers at your union in 1972?

A No, I didn't.

Q Have you retired at any time from 1972 to the present date with your union?

A No.

Q Are you collecting any union pension?

A No.

Q Did you ever make an application for unemployment insurance benefits?

A No.

Q From the time this accident happened, did you collect any guaranteed annual wage?

A Not a quarter.

Q What was that?

A Not a quarter.

MR. TESTA: I didn't hear the answer.

(Answer read.)

MR. TESTA: I have no other questions of the witness.

THE COURT: All right, at this time we are going to take a 15-minute recess.

You had your hand up, Juror #4? Do you want to approach the bench?

JUROR #4: It has to do with counsel's question.

THE COURT: Just a minute.

Approach the bench, please.

All right, the other jurors are excused. The witness may stand down for 15 minutes.

(Jury not present.)

THE COURT: Mr. Sorgi, do you want to listen? This juror is about to address the Court. Do you have something to say?

JUROR #4: Yes, your Honor. I just wanted to clarify in my mind what exactly was the illumination.

THE COURT: Just a minute. Let me say this to you: You have to judge this case on the basis of the evidence as it's presented to you. If they fail to clarify anything you have to take that into consideration. You are to judge it on the evidence or lack of evidence, so to

speak. Whatever is presented, it's on that basis that you have to decide the case.

Do you understand that?

JUROR NO. 4: Yes, your Honor.

THE COURT: All right.

(Recess.)

* * *

THE COURT: Mr. Sergi, are you ready to proceed with your redirect examination?

MR. SERGI: I have no further questions of Mr. King, your Honor.

MR.MOLANPHY: Your Honor, may I ask one clarifying question in view of some questions that were asked by the third-party defendants?

THE COURT: Yes.

RECROSS EXAMINATION

BY MR. MOLANPHY:

Q Mr. King, this hole that has been mentioned, this is actually a space between two steel beams, is that correct?

A Yes.

MR. MOLANPHY: Thank you, sir.

THE COURT: Anything further? If not the witness may come down.

Thank you.

(Witness excused.)

THE COURT: Is there another witness?

MR. SERGI: Yes, Mr. Auletti, please.

A N D R E W A U L E T T I, called as a witness by the plaintiff, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SERGI:

Q Mr. Auletti, what is your occupation?

A I am a carpenter foreman on the waterfront.

Q Would you keep your voice up, please, so we can hear it back here.

A I am a carpenter foreman on the waterfront.

Q Were you ever employed by Court Carpentry?

A Yes, sir.

Q For how many years had you been employed by Court Carpentry?

A Ten to twelve years.

Q Is Court Carpentry still in business?

A They are out of business right now.

Q During the time you worked for Court Carpentry were you also a foreman?

A Right.

Q Would you tell us what is the work of a foreman of a marine carpentry company?

A Well, you have a gang of carpenters working and a gang of lashers. We secure the cargo before it goes out to sea.

Q Do the marine carpenters have anything to do with the loading or unloading of cargo?

A No.

Q Do you know who does the loading of the cargo on the ships which you secure cargo for?

A Well, every pier has a different stevedore. It could be Princeton, it could have been ITO, it could have been anybody.

Q Are you familiar with Mr. Jackson King who testified a moment ago?

A Yes.

Q Did you know him while he was working for Court Carpentry?

A Yes.

Q Did he ever work under your supervision while you were a foreman?

A Yes.

Q Did you know him during the days and hours and years that he worked for Court Carpentry?

A Yes.

Q Did he work directly under your supervision in any one of those years that he worked for Court Carpentry?

A Oh, many a time.

Q Did you observe the manner in which he worked during the times that he worked under your supervision?

A He is a good working man.

Q Thank you.

Do you recall a time when a Mr. Jackson King had an accident aboard a vessel on which you were a foreman?

A Well, I recall the accident. It was about six years ago. It's not too easy to remember.

MR. TESTA: If your Honor please, could we ask this witness to speak up so we can hear him back here?

Q Speak up, please.

A All right.

Q Make like you are on the ship.

MR. SERGI: Mark this for identification, please.

(Plaintiff's Exhibit 5 marked for identification.)

Q Mr. Auletti, would you look at that document

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which is marked Plaintiff's Exhibit 5 for identification. Can you tell us what that is?

A It's an accident report I filled out. The man was hurt.

Q You filled that out yourself?

A I didn't get you.

Q Pardon?

A I didn't get that last statement.

Q Did you make that out yourself?

A Yes, sir.

Q And did you sign it?

A Yes, sir.

Q Does it bear a date?

A Yes. June 18, 1968.

Q Were accident reports made out in the regular course of the business of Court Carpentry and Marine Company when any of its employees were injured?

A We make a report no matter if a man gets a scratch on his finger. As long as it's reported to us I report it to the mate on the ship and I make out one of these slips and I turn it into the office.

Q Are the reports that are made out regarding the accidents regularly kept by Court Carpentry after they are made out and filed?

A Right, because they are insurance cases. The insurance company gets a hold of them.

Q Is this one of the accident reports that were made out and regularly kept by Court Carpentry as a result of investigation of an accident happening to one Jackson O. King?

A This report here?

Q Yes.

A It must be.

MR. SERGI: I offer that report, your Honor, as a report made out by this foreman and made out as regular business of Court Carpentry and maintained in the regular course of their business investigating accidents happening to their employees.

MR. MOLANPHY: May we have a look at it, your Honor?

THE COURT: Yes. Is there any objection to the receipt of that exhibit?

MR. MOLANPHY: I don't have any objection, your Honor.

MR. TESTA: No objection.

MR. HOCKETT: Excuse me, I have one question on voir dire, if I may, Judge.

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. HOCKETT:

Q Mr. Auletti, this report that's marked as Exhibit 5 for identification and the information that you wrote down on that exhibit, where did you get this information from?

A What do you mean where did I get it from?

Q Well, you made out the report. Did you see the accident?

A I didn't see the accident, no.

Q Who told you about what happened?

A As soon as the man got hurt somebody said, "One of your men got hurt," and I went over to the hatch to check it out and I got to make out a report when a man gets hurt.

Q From whom did you get the details of the accident?

A This is going back six years. I don't know who I talked to six years ago. I have been running ships for 28 years. I run from 20 to 30 men a day and if you can think I can remember -- this is the first time I seen that statement in six years.

Q Sir, what I am saying is do you know who gave you that information on that report?

A No. If I wrote the statement --

MR. HOCKETT: I object to it, your Honor, in that it's hearsay in that the report is filled out as a second-hand report. The gentleman doesn't know who gave it to him or the source of this gentleman's knowledge.

MR. SERGI: Your Honor, I established I think through this witness that this is one of the records that is kept in the regular course of business of Court Carpentry in making their accident reports and it's maintained and kept in the regular course of business of Court Carpentry. I have a memorandum, your Honor, in support of my position as to the admissibility of that report.

THE COURT: Just a minute, please.

The objection is overruled.

MR. HOCKETT: Just for the record, your Honor, in addition to the objections I have made heretofore, in answer to counsel's arguments, I would like it to be known that Court Carpentry is not in the business to render accident reports, but rather to do carpentry aboard ships, as has been testified previously today.

THE COURT: You would like what?

MR. HOCKETT: That the business of Court Carpentry is not to render accident reports, but to do and perform lashing work aboard ships.

THE COURT: But the witness' testimony was that in connection with that business it was a regular duty or course of conduct on the part of Court Carpentry to make and keep such reports. That's the basis on which it's admitted and that's pursuant to 28 U.S.C. Section 1732.

MR. HOCKETT: I respectfully except to your Honor's ruling.

THE COURT: Respecting to records made and kept in the regular course of business.

*** (Plaintiff's Exhibit 5 received in evidence.)

MR. SERGI: Would you mark this Plaintiff's Exhibit 6 for identification, please.

*** (Plaintiff's Exhibit 6 marked for identification.)

BY MR. SERGI (CONTINUED):

Q Mr. Auletti, you may read Plaintiff's Exhibit 5, which is the accident report and in conjunction therewith read to yourself, if you will, Plaintiff's Exhibit 6 for identification.

Q Have you finished, Mr. Auletti?

A Right.

Q What is that Exhibit 6 for identification?

A This is a statement I must have gave some insurance investigator.

Q It's a statement that you made, is that right?

A Right.

Q What is the date of that statement?

A This is August 1, 1968.

Q Having read that statement, Plaintiff's Exhibit 6 for identification, and the accident report, Plaintiff's Exhibit 5 in evidence, does it now refresh your recollection as to the occurrence of an incident that happened on June 18, 1968 including Mr. Jackson King?

A Right.

MR. MOLANPHY: Your Honor, may we see Exhibit 6 for identification to which reference is now being made?

THE COURT: Yes.

MR. SERGI: May I continue while you are looking?

MR. HOCKETT: No.

THE COURT: Let them have a chance to read it.

Q I believe my last question was whether looking at both of those exhibits they refresh your recollection and I think your answer was yes.

A Yes, sir.

Q Having refreshed your recollection, can you tell me whether you were the foreman on that ship upon which this accident happened on June 18, 1968?

A For my signature to be there and that statement to be there, I must have been the foreman.

Q Do you recall ordering Mr.Jackson King and another co-worker into number 4 hatch to do some lashing that day?

A Yes, sir.

Q At about what time of the day was it that you ordered them into the number 4 hatch?

A According to this statement it was about 10:30.

Q 10:30 a.m.?

A Right.

MR. TESTA: I am going to object to this witness looking at the statement and testifying to what the statement says. If he was shown the statement for the purposes of refreshing his recollection that's one thing. If he is now testifying as to his recollection

refreshed, he should not be asked questions then permitted to look at a statement and then say what the statement says. He was shown the statement for a purpose.

THE COURT: The first question was whether the statement refreshed your recollection and you said yes.

THE WITNESS: Your Honor, it is six years back. It ain't like yesterday.

Q Mr. Auletti --

THE COURT: Then, in other words, you can't recall --

THE WITNESS: I can't recall an hour. They are pinpointing me, now, you know, as to whathour this happened. I could say it happened in the morning, but if theywanted an hour --

THE COURT: You can look at it and if it refreshes your recollection then tell us, but don't read from the statement.

MR. TESTA: At this point I ask the statement be removed from the witness and the witness be advised to answer from his own independent recollection today.

MR. SERGI:He must use it to refresh his recollection and not read from it, so if he has to make references to it, I think he has a right to do that.

MR. TESTA: If your Honor please, he already

made references. He read it once and refreshed his recollection. To continually keep looking at it is merely to read from the statement which is an improper procedure, your Honor. He either testifies as to his recollection refreshed or he has no recollection, one or the other.

MR. SERGI: Your Honor, I respectfully submit this accident having happened in 1968, rightly so as the witness stated he can't remember. He now has stated that he requires both of these documents to refresh his recollection. If I question him about certain items and he doesn't remember but he must look to whatever documents are there to refresh his recollection, I think he should be permitted to. I have not offered it in evidence and I am not going to.

MR. TESTA: Again, I object to this entire procedure, your Honor. He read it once and if it refreshed his recollection, then he must testify to his recollection as refreshed, but he cannot be asked a series of questions --

THE COURT: The problem was he was asked to read the whole thing and tell us whether it refreshed his recollection. He is now being asked specific items which he doesn't recall, so he has to look again and the question still is having looked, are you now able

to recall the time. If you are not able to recall the time even after you have looked, of your own recollection, tell us.

THE WITNESS: I recall the time now that I looked, it's 10:30 in the morning, but as I was saying, I only read this thing five minutes ago. I should have had this outside with me when I was sitting in the room. This is a two-page letter and I am not a lawyer, I am only a carpenter. How could I remember what's on this paper in five minutes from these sheets --

MR. TESTA: Please, Mr. witness.

This is entirely improper procedure to give a witness a statement and tell him to read it and ask him a series of questions where he has no recollection and he is simply reading what's in the statement. He either has a recollection as refreshed or he has no recollection, but in any event the statement should not be in front of him so he can refer to it constantly.

MR. SERGI: I don't know how he can refresh his recollection unless he has it in front of him.

Q Now, Mr. Auletti, please, don't read from that statement until I ask you to refresh your recollection. Then look at it only to refresh your

recollection and then testify as to what you remember as a result of looking and as a result of remembering.

MR. TESTA: Again I am going to object to the statement remaining in the front of the witness, your Honor. He has read it once. I say it again that this is a highly improper procedure.

THE COURT: Well, we will see how he makes out from now on.

Proceed.

Q You say that you asked him to go to number 4 hatch at 10:00 in the morning?

A Right.

Q Prior to asking these men to go to number 4 hatch, do you know whether number 4 hatch had any cargo?

A It was loaded with steel.

Q Do you know who loaded the steel?

A The stevedore.

Q Who was the stevedore?

A That I don't know.

Q Well, you may refresh your recollection. Don't read it. Read it to yourself and tell me if you now remember.

A There is no stevedore --

MR. HOCHETT: Now I join with Mr. Testa.

A I am not going to read this. There is no stevedore's name on here.

Q Please read it to yourself.

MR. TESTA: If your Honor please, this is the same objection I made before and I want to press this objection to the constant asking of questions where he doesn't know and he is saying, "Read the statement." All that is happening is that he is reading the statement. This is not his testimony and it's highly improper.

THE COURT: Mr. Auletti, look at the statement and if it refreshes your recollection -- if it makes you recall who the stevedore was in fact tell us. If you can't recall, just say, "I cannot recall."

THE WITNESS: Right now on the statement, your Honor, there is no stevedore's name. That I can tell you without looking at it.

THE COURT: All right.

MR. SERGIO: Reading from Exhibit no. 5, your Honor, which is now in evidence --

THE COURT: You asked him to look at 6. Do you want him to look at 5 and see if that refreshes his recollection?

MR. SERGI: I will read Exhibit no. 5 which is now in evidence.

MR. HOCKETT: Excuse me, your Honor, may we approach the side bar a minute on this point?

THE COURT: No, proceed.

Q Reading from Exhibit no. 5, "Description of Accident: There are steel beams in hatch that were loaded June 17th and 18th by stevedore ITO."

Does that refresh your recollection now?

A Right.

Q Did you walk into number 4 hatch at any time before ordering Mr. King and the other man into that hatch?

A No.

Q Did you know what cargo was in hatch number 4 when you sent these two men into hatch number 4?

A Not until I went over and looked at it.

Q Pardon?

A Not until I went over and looked at the hatch and seen what was in it and sent them down to lash it.

Q So you had looked into the hatch before you sent them over to the hatch?

A Right.

Q Do you recall what was in the hatch besides steel?

A There was some H-beams and some beams on top,

some boom parts or something, something like that.

Q Did you see whether there was any aisle or space down the center of that hatch?

A Well, one part of the beams on the offshore side there was a space, they wasn't close together.

Q No, you don't understand my question and I move to strike it out.

My question at this time is was there an aisle down which men could walk --

A No.

Q -- betweeen --

A I follow you. No aisle.

Q When you looked down there did you see the steel beams?

A Yes. They completely covered the hatch.

Q Could you see the top of the steel beams?

A Right.

Q The booms that you say were down there, did they cover all of the steel beams or some of the steel beams?

A That I don't remember.

Q When you looked down the hatch could you see an area or the steel beams that were not covered by the booms?

A I believe half of the area was covered with booms and half was not.

Q Whatever you saw of the steel beams that were not covered with the booms or crane booms, was there any spaces that you could see in the steel beams that you saw down in the cargo the first time you looked down there?

A Not the first time, not that I recollect.

Q When were you made aware that Mr. King had an accident?

A As soon as the party told me about it I checked the hatch and I seen where he fell down. There was a space about five or six inches in between the beams and he fell through it.

Q Did you make this observation and see the space between the beams where Mr. King had told you he had fallen through?

A Right. I checked it out before I made the report.

Q And that was after the accident when he told you?

A Right.

Q Did you go down into the hatch or did you make your observation from up on top?

A You could see the space from up on top on the other end of the hatch.

Q When you say the other end, do you remember whether it was the forward end or the aft end?

A It couldn't be the aft end. He probably went down the forward end where the ladder was.

Q Could you locate whether the space was on the beams in the center of the hatch or square off the center of the hatch?

A I think they was off the end of the hatch.

Q Off the end of the hatch?

A Right. On the offshore side.

Q On the offshore side?

A Right.

Q Could you describe the kind of a space that you saw?

A A five-inch space.

Q Did you do anything after you observed the space as you just described; did you speak to anyone?

A That's our job. We chock out these spaces. We lash them and chock them out to secure them for going to sea. We don't do nothing about them, the space. The stevedore leaves them that way and then we have to secure it.

chock out what these fellows didn't pull together with

Q What do you mean by secure it?

A Well, if there is a space in between the girder we put a wooden chock in it.

Q What does that mean?

A Well, if you have a space from this wall to that, we put a 4X4 from this wall to that wall so they don't come together while they are out at sea.

Q How about covering the space, whose job is that?

A We never cover any space, we just chock the spaces.

Q Whose job is it to cover the spaces if there is any?

A Anything that is to be covered the stevedores cover it.

MR. HOCKETT: I am going to object to it, your Honor, who does what in covering the spaces. There is no testimony that this is done at all.

MR. SERGI: Well, I will lay a little foundation.

THE COURT: The witness previously testified that you had worked on ships how long?

THE WITNESS: 28 years.

Q And during that 10 years did you have occasion

THE COURT: He said 28. Couldn't you hear? I thought you said 28.

THE WITNESS: That's what I said.

Q I'm sorry, I couldn't hear back here.

During those 28 years did you work on beams?

A I worked on everything.

Q When there are spaces between the beams, who covers them, if anyone?

MR. HOCKETT: I will object to the question.

THE COURT: Overruled.

A The stevedore covers them.

Q What did you say?

A I said the stevedore covers them. They make a floor of dunnage and they put more cargo on top.

Q Would you describe for this jury and the Court what you mean by dunnage.

A It's going to be kind of hard.

Q What is dunnage?

A You see this board that's in front of you -- that whole length of board there.

THE COURT: Are you talking about the jury rail?

THE WITNESS: Right, the jury rail.

A It's about one inch thick. It's rough lumber.

Q Similar to the top of this rail?

A Right. You could call that a piece of dunnage, but it's finished. It comes in six foot, four foot, eight foot up to 15 foot and when they make a floor they lay it out and they put the good boards up on top and the scrap pieces on the bottom.

Q Who would make this floor that you are talking about?

A We only make the floors --

Q Who would make the floor?

A The stevedore makes them for us.

Q After you observed the space as you described after the accident, did you talk to any of the ship's officers at the area where this accident happened?

A That's a rough question.

Q Pardon?

A That's a rough question.

Q Well, read your Exhibit 4 for identification to yourself and see if that refreshes your recollection as to whether you spoke to anyone at the hatch.

MR. MOLANPHY: Your Honor, if I may join in the objecting parties at this moment on the grounds that this is obviously going to lead to questions of a hearsay nature.

MR. SERGI: Withdraw that question.

Q Reading from Exhibit 5 in evidence, Mr. Auletti, will you listen, please.

A Yes.

Q "Nature and extent of injury: Injured left knee. Was given first aid by Chief Officer of vessel."

Does that refresh your recollection as to whether you spoke to the Chief Officer of the vessel following this accident?

A Well, any time there is an accident, without reading this report, we go to the Chief Officer.

THE COURT: Just a minute. Try to answer the question.

The question is does his reading that to you refresh your recollection, yes or no? Does it refresh your recollection? That's what we are trying to find out, whether reading things to you brings back to your mind to whom you spoke. Does it?

THE WITNESS: Right, it does.

THE COURT: All right, now let's proceed.

Q It does?

A Yes.

Q Now that you have refreshed your recollection, do you remember whether you spoke to the Chief Officer of

the vessel on the vessel immediately following this accident?

A I gave him a report of the accident. I did speak to him. I think he gave first aid to the man.

MR. MOLANPHY: To that I have no objection, your Honor.

Q Did you tell the Chief Officer of the space in that hatch between the beams?

A Definitely.

MR. MOLANPHY: I object to this portion of it, your Honor.

THE COURT: The question to the witness is whether he told somebody.

MR. MOLANPHY: To the extent that it might be reflected in the log book entry which is itself in evidence, then I have no objection.

THE COURT: Overruled. The question to the witness was whether he, the witness, told somebody something.

Q The question, Mr. Auletti, is did you tell the Chief Officer when you gave him the accident report that there was a space between these two beams at the place where you say you saw it.

A Definitely.

MR. SERGI: I would like to read at this time, your Honor, Exhibit 5, which is in evidence.

(Plaintiff's Exhibit 5 received in evidence.)

MR. SERGI: May I read from Plaintiff's Exhibit 4, which is the ship's log and its translation, because the log is in German.

This is the translation of the accident report from page 34 of the log book, Thursday, the 13th of June, 1968.

(Portion of Plaintiff's Exhibit 4 in evidence read.)

MR. SERGI: No more questions of Mr. Auletti, thank you.

THE COURT: Mr.Molanphy, do you wish to cross examine this witness?

MR. MOLANPHY: Does your Honor intend to keep going?

THE COURT: Yes. I intend to finish with this witness.

MR. MOLANPHY: May I see Exhibit 6, please.

MR. SERGI: It's Exhibit 6 for identification.

MR. MOLANPHY: Yes.

was about a six-inch space, was this a space between two

CROSS EXAMINATION

BY MR. MOLONEY:

Q . Auletti, would you look at the signature which appears on the bottom of the two pages of Exhibit 6 for identification and tell the Court and jury whether or not that is your signature.

A It's my signature.

Q On the day of this occurrence, Mr. Auletti, June 18, 1968, you were Mr. King's boss, weren't you?

A I didn't get the question.

Q You were Mr. King's boss?

A Right. I was the foreman on the ship.

Q And you were the foreman of all of the lashers and carpenters?

A Right.

Q Do you remember what time the lashers and carpenters went on board that day?

A 8:00 in the morning.

Q Approximately how many lashers and carpenters went on board?

A That I don't remember.

Q Do you remember where the lashers and carpenters were first assigned to work that morning?

A I don't remember.

Q Was it to some hatch other than to hatch number 4?

A It could be.

Q But there came a time sometime around 10:00 or 11:00 when you sent two of the men at least down into hatch number 4?

A Yes, sir.

Q Did you yourself at any time before sending these men down into the hatch, go down into the hatch yourself?

A No, sir.

Q Was hatch number 4 completely open on the weather deck?

A Yes.

Q So you could see all of the cargo that was down there below?

THE COURT: Please answer orally so the reporter could get it.

A Yes, sir.

Q None of the hatch covers were in place on the weather deck?

A No, sir, no covers at all.

Q That is the top deck?

A No, sir. Not that I know of.

Q Was there plenty of natural light to see down in the hatch?

A It was daylight.

Q The men went down about 10:00 or 10:30 into hatch number 4 to the first deck down, to the shelter deck?

A Yes.

Q It was their job to lash cargo that was stowed in that hatch?

A Yes.

Q Which of this cargo were they going to lash?

A The steel beams and the cargo that was on top of it, probably. You have to secure a complete hatch.

Q Do they lash the beams as well as the structural steel that's on top?

A Probably.

Q After you sent the men down, did you leave the scene and go off to another part of the vessel?

A Right.

Q At the time you were interviewed and gave your statement, do you remember telling the man that you gave this statement to, "I sent my men down and I went to the other side of the ship as I had men

Q I only asked you whether you had any

working all over the ship," is that correct?

A Yes.

MR. SERGI: Your Honor, I object to counsel reading from an exhibit which is not in evidence. It's only marked for identification. If he wants to --

THE COURT: This is 6?

MR. SERGI: This is 6. It's only for identification. If he wants to offer the entire statement I have no objection and then he may read the whole thing, but if it's not in evidence I object to his reading it.

MR. MOLANPHY: I submit, your Honor, if the witness was allowed to read it I think I should be allowed to read it.

MR. SERGI: He read it to himself.

THE COURT: He read it to refresh his recollection.

Q Did you tell the investigator that the men were down in hatch number 4 for approximately one hour before you heard of this accident?

A I didn't express any time.

Q Would you look at the last line of that first page going over onto the second page.

MR. SERGI: Again, your Honor, he is trying to impeach this witness with a statement that's not in evidence.

If he wants to offer it I have no objection to his using it.

THE COURT: The question is does that refresh the recollection of the witness as to what --

MR. SERGI: That is not what he said.

THE COURT: The question to the witness is whether that refreshes his recollection. Since it's not in evidence, Mr.Molanphy, he can look at it and tell us if he now recalls what he told the investigator.

Q Mr. Auletti, do you now recall telling the investigator --

A It was an hour after the men went down into the hatch that this man got hurt. Is that what you want to bring out?

Q Yes, sir.

A I recall that.

Q Is that true?

A It's true, yes.

Q Do you know what these men were doing for that approximate one hour between the time you sent them down and the time --

A They were probably putting wires on, the lashing gear on.

Q They were doing their work down there?

A Right. I don't stand over them.

Q No, sir.

Do you give your instructions to your men to keep --

A They know what to do. They are experienced lashers. I just tell them to go down and lash the hatch and take care of it. If the mate is not satisfied he goes and tells them what else he wants. I am a carpenter foreman.

MR. MOLANPHY: Your Honor, I move to strike as not responsive. I haven't even finished my question.

THE COURT: All right, let's hear the question, Mr. Reporter.

Q Mr. Auletti --

THE COURT: Just a minute. Do you want the question read to you so you can go on?

MR. MOLANPHY: Could I strike the whole thing and start again?

THE COURT: No, let the reporter read the question. I want to see if it was responsive.

(Question read.)

MR. MOLANPHY: That's as far as I got.

THE COURT: Let's withdraw that, then, and put another question.

Q Do you instruct your men, Mr. Auletti, to keep

their eyes open for dangerous conditions, potentially dangerous conditions?

MR. SERGI: Objection, your Honor. I don't know what he means by potentially dangerous conditions. It's a very general term. He is speaking about spaces?

MR. MOLANPHY: I just asked him did he give instructions to his men to watch out for these things.

MR. SERGI: What things? I don't know what that means.

MR.MOLANPHY: Spaces in the stow.

MR. SERGI: That's better.

THE COURT: Well, that's clear.

All right, you can ask him that.

Q Do you give such instructions to your men?

A Will you repeat the question?

MR. MOLANPHY: Would you repeat it, please, Mr. Reporter.

(Question read.)

Q Mr. Auletti, do you instruct the men working under you to keep their eyes open for spaces in the stow in which they are working and walking?

A We do teach them safety habits. We tell them in the morning to be careful, but we don't look at every hatch. Nine jobs out of ten are dangerous on the

waterfront.

Q You do give your men that much in the way of instruction?

A No. I am not a safety man. We have safety men on the vessels. They tell them what to do. I am only a foreman.

MR. SERGI: Objection. I move to strike anything with reference to what somebody else might be telling these people.

THE COURT: Yes, sustained.

Q Mr. Auletti, I believe you said in response to a question by Mr. Sergi that if the lashers or carpenters come upon spaces they chock them but they don't cover them, is that correct?

A That's correct.

Q Is it fair to say, then, Mr. Auletti, that it's customary or not unusual for carpenters and lashers to come upon spaces in stow?

A Yes. Well, you see what happens -- when we get steel like this, we send the lashers down the hatch first to lash it. What they don't, we chock together with wooden chocks. So on a deal like this, the steel is 50 foot long. We send the lashers down first and when they are finished we send the carpenters down and they

chock out what these fellows didn't pull together with wires. You know what this lashing is, you have been aboard a ship, it is 5/8 wire with a turn buckle. Some squeeze it together and some don't. If they was down in the hatch and our -- like the statement says, they wouldn't have completed that job yet. That's how this gentleman probably fell through the steel.

Q But my question to you, sir, is that it's not unusual for men in your job to come upon spaces in the stow?

A We come on all kinds of spaces on the waterfront. You got open hatchcovers, broken handles. You can't even get insurance being an employee on the waterfront.

THE COURT: Please don't volunteer anything, Mr. Auletti.

THE WITNESS: Okay.

MR. MOLANPHY: Could I have Exhibit 5, please.

Q Do you recall, Mr. Auletti, that Mr. King kept on working after his accident up until about 2:45 p.m.?

A Yes. He worked. He tried to work. He didn't go down the hatch no more, probably.

Q Reading from the accident report one particular sentence, "Lasher was lashing structural steel sitting on

top of I-beams."

A Right.

Q You made the report, Mr. Auletti. Were you talking about Mr. King sitting on the beam or were you talking about the structural steel sitting on the beam?

A I don't follow you.

Q Is some of the work that Mr. King does, does that entail possibly sitting on the surface on which he is working?

A I don't think any of the workers usually sit down.

MR. MOLANPHY: I have nothing further from this witness, your Honor.

THE COURT: All right, Mr. Hockett.

MR. HOCKETT: Just one or two questions.

CROSS EXAMINATION

BY MR. HOCKETT:

Q I believe you testified that it was customary and usual for lashers to go down and with the lashing bring together spaces in cargo, is that correct?

A Yes.

Q Would that include steel beams that are 70 foot long by 12 foot?

A No. These beams were probably too heavy to pull together.

Q Would they, then, put chocking in between the spaces?

A Right. After the lashers was finished we send the carpenters down to chock it out.

Q This is a usual and customary practice?

A Right . It's usual procedure, right.

Q Finding spaces in beams of this sort is a usual or expected occurrence, is that correct?

A Well, no. It's all according to who is loading them. If you get a gang that's a good gang they keep the beams together. If you get a gang that we got today, they leave them like that. The majority of the men on the waterfront don't want to work any more.

Q The question I asked you, though, is that when lashers and/or carpenters go down and do work -- to do work such as has been described with these 70 foot long beams, is it unusual to find the condition that has been described in the various reports that have been marked as exhibits, spaces between the bars?

MR. SERGI: I submit that question was answered, your Honor.

THE COURT: I will let him answer.

MR. SERGI: In his last answer.

A I don't follow you on the question.

Q Is it unusual to find spaces in beams of this sort?

A As I told you some gangs put them tight and some gangs will put them loose.

Q Is it unusual to find spaces between the --

A No, it's not unusual.

Q And is this an expected condition?

A It could be possible, yes.

Q Prior to sending Mr. King and Mr. Perry down into the number 4 hatch, did you inspect the H-beams that were to be lashed?

A Do you know how big a hatch is?

Q I beg your pardon?

A Do you know how large a hatch is?

Q Sir, did you or did you not inspect the area?

A N o, I didn't inspect the complete area. I just sent the men down to lash.

Q From the weather deck or main deck, did you look down into the hatch?

A That's right.

Q Now, prior to sending your two men down,

did you see spaces between the beams?

A I seen the space between the beam after the man got hurt.

Q I am talking about prior to sending the men down.

A That's what you just said before I sent him down. How do you want me to answer the question?

THE COURT: Listen to the question. The question is did you see any spaces before?

THE WITNESS: No.

Q After you were advised of this accident, did you again look down in the number 4 hatch?

A You mean after the accident or before the accident?

Q That's right, after the accident.

A We must have secured the ship for sailing. I must have been up and down the hatch after that.

Q Yes or no, after the accident did you look into number 4 hatch?

A I don't remember.

Q Did you look from the weather deck down into the hatch?

A I don't remember.

Q Did you not testify that after the accident

tell you?

was reported to you that you saw the space in the beams?

A I told you that. I told you that. I said that in the question before. There are five, six-inch spaces between the beams.

Q When you say that where were you?

A On the top deck.

Q You were looking down from the top deck?

A That's right. It's about a six-foot span.

Q This space, it was between two beams, is that correct?

A Right.

Q I believe you testified -- well, tell me again, how wide was the space?

A I said five or six inches. Maybe four inches. I didn't go down and measure it.

Q Mr. Auletti, was this space between one beam and the beam next to it?

A It was on the outside on the offshore part of the hatch. Now, when I work a ship I work on the inshore side of the hatch. That's why I didn't see no space there when I sent the men down.

Q That wasn't my question. My question is this space that you saw after the accident that you indicated

was about a six-inch space, was this a space between two of these beams that we have been talking about?

A Two of the beams, right.

Q Did the space run the whole length of the beams, the 70 feet or so?

A It could have possibly run the whole length.

Q Did you see whether it did?

A I believe it ran the whole length.

Q The whole length of the beam, some 70 feet?

THE COURT: Not what you believe, what you saw. The question is did you see the holes running the whole length of the beam. That is the question.

THE WITNESS: You see on these 70-foot beams -- these are not 70-foot beams. I think these hatches are only 150 foot. The beams are 40 foot. They are about 40 foot, these beams.

Q You saw the space running the whole 50-foot length?

A I don't know about the whole 50-foot. I know the space where the man fell.

Q That was one section of where these two beams are -- Mr. Auletti, will you let me get a question out.

the men fell, right?

A Right.

Q Did this space run forward of where the man fell? Did it continue on down?

A I don't remember.

MR. HOCKETT: No further questions.

THE COURT: Mr. Testa.

CROSS EXAMINATION

BY MR. TESTA:

Q Mr. Auletti, before you came in here today you didn't have any independent recollection of this accident, did you?

A I didn't know nothing about this accident till 9:00 last night when I got home.

Q 9:00 last night.

A Half past 8, 9:00.

Q This accident happened in June of 1968, did it not?

A Right.

Q If I heard you correctly you said between June of 1968 and 9:00 last night you didn't know anything about this accident, is that right?

A That's right.

Q Did you talk to anybody about it in those years?

A No, sir.

The first time I seen this gentleman was when I walked in the Court today. I don't even know him.

THE COURT: Now, when you say this gentleman, who are you talking about?

THE WITNESS: This lawyer here that subpoenaed me. I didn't come on my own, I got subpoenaed to come down.

THE COURT: You are saying the first time you saw Mr. Sergi was today?

THE WITNESS: Right.

THE COURT: Okay.

Q Before you looked at this statement you had no independent recollection of what happened, isn't that correct?

A No, I keep a record book of these accidents. Just this one I don't have a record of.

Q You keep a record book?

A Yes, I keep a record book.

Q Did you bring that book with you?

A No, I don't have it. I wish I had it. The only trouble is that I don't have it of this accident, but if my name is on the accident report it happened on my job, right?

Q I only asked you whether you had any independent recollection of this before you saw the statement.

A No, I just read the statement. That's all I know about it.

Q If you hadn't read the statement, you wouldn't have remembered a thing, is that right?

A I wouldn't say that. I know when a man gets hurt.

Q If you hadn't read the statement would you have any independent recollection of what had happened?

A I had to read the statement to refresh my memory. This happened six years ago.

Q You looked into that hatch before you sent these men in it, didn't you?

A Yes.

Q You didn't see any space in it before you sent them in?

A I wasn't looking for any space.

Q All right, and there would be nothing unusual about a space between these beams, would it?

A No. There are spaces in all hatches.

Q When the men go down there to lash these beams

they pull them together?

A That's right. If they are light enough. These was heavy beams. They couldn't pull them together if the space was there.

Q But they have to lash them first, don't they?

A Right.

Q Before you can do anything about a space, whether you saw it or not, you have to do the lashing first, wouldn't you?

A Right.

Q And that's what they were down there doing?

A Well, if this guy got down at 10:30 and he got out at 11:30, they didn't even start to lash.

Q How long would it take them to lash the beams in a hatch like this according to your experiences?

A Four hours.

Q So that they would have to spend four hours lashing the beams before they could do anything about the spaces whether they were there or not.

A That's right.

Q Eventually after some three or four hours of lashing, if there were any spaces there, then they would fill them in, is that the idea?

A Yes. Then we fill them in with chocks.

Q Then the stevedore would put down a dunnage floor over it?

A No. When we went in the hatch to lash it the stevedore was finished. There was no other cargo going in the hatch.

Q No other cargo?

A No. Because we wouldn't have lashed it.

Q Just those beams?

A That's right.

Q They were going to leave the rest of the hatch empty?

A Well, they had one-half of the hatch had booms on them. Maybe they put cargo in. Maybe they threw rubber tires in after the next day. I don't even know how long the ship ran.

THE COURT: Mr. Auletti, you are here to testify as to only those things that you know of your own knowledge. Not what you suppose or think and, do you understand?

THE WITNESS: Right.

THE COURT: That doesn't help us. Just tell us what you know because you saw it or heard it.

THE WITNESS: Yes.

THE COURT: All right.

Q These beams were only about two feet high, weren't they?

A Two feet high.

Q How big is this hatch?

A 40 foot. The opening is 40 foot on the top of the hatch and it would expand maybe 5, 6 foot on each end.

Q How high is the hatch from top to bottom?

A 12 feet.

Q So if they put the beams on the bottom that would only take up two feet, wouldn't it?

A Yes.

Q There would still be another 10 feet above them?

A Right.

Q So you don't mean to say they just put the beams in there and left it with 10 feet of empty space, do you?

A They could have left it that way on account of the weight. Hatch covers take so much weight and that's all.

Q You are not telling me they would leave

10 feet of empty space in a hatch and not put cargo in it, are you?

A Sure. We put one car in a hatch and nothing else sometimes.

THE COURT: Just a minute. All we want to know is what occurred at this time. Do you recall that there was any cargo on top of the steel beams? Is that the question, Mr. Testa?

MR. TESTA: Yes.

THE WITNESS: There was some booms on top.

THE COURT: He said that at least three times, Mr. Testa. Let's proceed.

Q But it would be customary for the stevedore to put a dunnage floor between one kind of cargo and another kind of cargo, wouldn't it?

A This was all steel cargo. They didn't have much dunnage to talk about.

Q Isn't it customary to separate cargo by dunnage floors?

A Yes.

Q And the stevedore does that, do they not?

A Yes.

Q If I understand everything that you said before, there is nothing unusual about finding spaces;

it's perfectly normal and customary to find spaces in that type of a cargo stow, is that correct?

A That's right.

MR. TESTA: Thank you.

REDIRECT EXAMINATION

BY MR. SERGI:

Q In loading the cargo, Mr. Auletti, by the stevedores, can that cargo be loaded in a manner which does not leave spaces between the beams?

MR. HOCKETT: I am going to object, your Honor. I don't think this witness is qualified to testify to stevedoring operations, loading or unloading. He is a lasher carpenter foreman.

THE COURT: Overruled.

MR. HOCKETT: Exception, your Honor.

Q Did you understand my question?

A I told you before in one of my statements that some gangs put the beams tight, they bar them in and then you get another gang that won't do nothing, they just lay them there and that's it.

Q Do you know which is the proper way of loading and stowing steel?

A It should be tight.

MR. HOCKETT: Objection, your Honor.

A The beams are supposed to be tight together.

MR. SERGI: I can't hear both, I am sorry. He is yelling in one ear and I can't hear him.

THE COURT: I think probably the form of the question is incorrect, Mr.Sergi. You are asking this witness, I assume based on his experience,whether he has seen beams spaced together so there is no hole, is that it?

MR. SERGI: Yes, I adopt that question, your Honor.

THE COURT: All right, let's put proper questions and then we don't get these objections.

Q Would you answer the question posed by the Court.

A Yes. I seen these beams tight together many a times.

Q When there are spaces in beams where your men are to work and in your opinion if the spaces are too large and too dangerous for your men to work, what, if anything, do you do?

A Well, we do go to stevedores and tell them --

Q What do you tell them?

A The men don't want to go down and work, it's dangerous.

Q What do they do?

A They come and correct the matter.

Q How do they correct it?

A They send a gang of men down and adjust the cargo.

Q How do they adjust it?

A They pull it tight the way it's supposed to be.

Q Do they ever cover it with dunnage boards?

A Sometimes.

Q So dunnage boards are used to cover the spaces?

A At times, or they fill it in with small general cargo.

Q In this particular case when you looked down into the hatch before you sent your men down, you saw no empty spaces there, did you?

A I wasn't looking for any, to tell you the truth.

Q What were you looking for?

A I was just looking at what the workmen had to do so I sent them down. When this man got hurt then I seen the space.

Q If you had seen spaces in between those beams in the area where they had to walk, what, if anything,

were you to do?

MR. HOCKETT: Objection, your Honor. This calls for a complete speculation.

THE COURT: Yes. Sustained.

Q Was it your duty as a foreman to look into that hatch and determine whether the cargo area where your men were going to work were safe for them to work?

MR. TESTA: Objection, if your Honor please, as to what his duty was. He has already testified as to what he did do in this particular case. He looked in there and he saw no space and he sent the men down there. I am going to object to any testimony --

MR. SERGI: That's not what he said.

MR. TESTA: That is what he said.

MR. SERGI: He said he didn't look for the space. I am now asking what his duties are. I think I have a right to know that.

MR. TESTA: I am objecting.

THE COURT: Ask him what his duties are.

MR. SERGI: That's what I just asked.

Q What are your duties in a situation where you are going to send your men into work in a cargo -- in a hatch with cargo?

A Well, I would like to tell you people, do you know what it's like to run 20 men on a ship?

Q Don't tell us that story, just tell us what your duties under these circumstances are.

A My duty is to send the men down to secure the cargo. If it's too dangerous for them to work I report it to the stevedore. What else can I tell you?

Q When you looked down into this hatch you did not look as to whether there was any space the first time?

A I wasn't looking for the space. I only seen the space when the man got hurt.

Q Were you looking into the hatch the first time to determine whether it was safe or not safe for your men to work?

MR. TESTA: Objection, if your Honor please. This witness has testified that his duty is to send the men down to do the lashing work. He already said what his duties are. I object as repetitious and his constant asking him as to what it is.

THE COURT: Overruled.

Q Can you answer the question?

A Well, if I sent the men down to lash it was probably safe enough for them to work. What can I

tell you?

Q I can't hear you. You are dropping your voice.

THE COURT: Repeat the question.

MR. TESTA: Let's hear the answer, if you will, your Honor.

A Repeat the question.

THE COURT: Read the question and the answer.

(Record read.)

MR. SERGI: No more questions.

MR. MOLANPHY: I have nothing further, your Honor.

MR. HOCKETT: Nothing, your Honor.

MR. TESTA: That's all.

THE COURT: Thank you, you may come down. You are excused.

(Witness excused.)

THE COURT: The jury is excused until 9:30 tomorrow morning.

(Jury not present.)

THE COURT: Mr. Sergi, how many more witnesses do you have?

MR. SERGI: I hope to have one more fact witness and a medical witness.

THE COURT: Mr. Molanphy, how many wit[illegible] do you plan to call?

MR. MOLANPHY: Your Honor, possibly an [illegible]

THE COURT: I can't hear you.

MR. MOLANPHY: Possibly an expert, your Honor.

THE COURT: Mr. Hockett?

MR. SERGI: What kind of expert?

MR. MOLANPHY: Captain Wheeler.

MR. SERGI: No doctor?

MR. MOLANPHY: No.

MR. HOCKETT: If the Court please, it's my understanding at this time possibly one fact witness. I don't kn[illegible].

THE COURT: All right, Mr. Testa?

MR. TESTA: I have one witness, maybe two, your Honor. I am not sure at the moment. Possibly only one.

THE COURT: We will probably conclude then tomorrow.

MR. MOLANPHY: Your Honor, may I ask the Court a question? At the time of the first trial I offered the testimony of Captain Wheeler on stevedoring practices and it was at a time when just the plaintiff and myself were

involved in the litigation. At that time Mr. Sergi objected to Captain Wheeler testifying and the Court sustained Mr. Sergi's position. Now, frankly, in the interests of economy, that it costs money every time Captain Wheeler comes down and if your Honor intends to so rule again, I might save a little bit of money by leaving him home.

MR. SERGI: The shipowner's action against the impleaded third-party defendant mandates to Mr. Molanphy to bring in Mr. Wheeler, who is an expert on stevedoring, is that correct?

MR. MOLANPHY: Yes.

MR. SERGI: The last time we tried this case it was just the shipowner and the plaintiff and there was no need to have an expert to testify as to that action.

THE COURT: So you have an objection this time?

MR. SERGI: If this third-party is not to go to this jury, and your Honor has not decided that yet as far as one of the third-party defendants anyway, if it's not to go to the jury, then I am going to object to the use of this expert witness in plaintiff's case because it's not to be used against the plaintiff.

MR. HOCKETT: Could I be heard, your Honor?

I am the stevedore here and as far as Captain Wheeler's testimony is concerned it's directly related to stevedoring practice and we in fact have demanded a jury on the third-party claim, so what Mr. Sergi says I think is a moot point, in that we are the impleaded third-party defendant demanding a jury and for whom the testimony of Captain Wheeler concerns, the stevedoring aspect

THE COURT: I see. So that you would be calling Mr.Wheeler to testify as to the stevedore's responsibilities here, is that it?

MR. MOLANPHY: Yes, your Honor, but as I tried to offer Captain Wheeler last time on the purpose of what is the customary method of stowing steel beams in a vessel.

THE COURT: All right. You can call him on that. We just heard Mr. Auletti on the customary method, or at least his experience as to what he has seen.

MR. HOCKETT: It's an issue now, Judge.

MR. SERGI: The issue as between the plaintiff and the defendant here does not include whether this cargo was loaded in a customary way or not. This is an action on unseaworthiness only and as the Court knows it does not matter who made it, how it was

made, whether it was customary practice or not. The question is if the opening between these beams into which the plaintiff stepped was an unreasonably unsafe condition, then that in and of itself --

THE COURT: That is between the plaintiff and the shipowner and no other.

MR. SERGI: If you are going to allow testimony from an expert it's going to cloud the issues of the plaintiff because he is going to say, "Well, that's the way you load it." Well, that doesn't matter whether that's the way you load it. If that's the custom and practice it's of no consequence as to the plaintiff's claim because that's not the question here. The question is whether there was a space and whether the space rendered the vessel unseaworthy because the space made that floor not reasonably safe.

MR. MOLANPHY: Your Honor, I think the Court --

THE COURT: There is no disagreement with that, Mr. Sergi. As I understand it, you are offering the testimony of Mr. Wheeler in your case against the stevedores, is that right, Mr. Molanphy?

MR. MOLANPHY: If I do in fact offer the

testimony, your Honor, and I still haven't made up my own mind on the subject, I would also at least tender his testimony as an offer of proof again as against Mr. Sergi's client on this theory, that the Court of Appeals has often said that evidence of what is customarily done is some evidence of what ought to be done.

MR. SERGI: That's my objection. That is as to negligence and there is no negligence allegation here. We are here reduced solely to the allegation of unseaworthiness and custom and practice does not interfere nor influence the determination of unseaworthiness. As I related before it doesn't matter.

THE COURT: As I said five minutes ago, the testimony was not receivable as between the plaintiff and the vessel owner. I said that I thought it was being offered between the vessel owner and the stevedore and he simply suggested that he thought it ought to be offered with respect to your client and the ruling is it will not be received for that purpose. But on the question of the stevedore's breach of his implied warranty of workman-like performance -- is that it?

MR. MOLANPHY: Again, it would cover both but now your Honor has ruled out one. Now I understand

your Honor's ruling and I will be guided by it.

THE COURT: Is that what you are offering it for?

MR. MOLANPHY: I may not offer it at all, your Honor, with that understanding.

THE COURT: All right, that may cut out one witness, then.

We will definitely finish tomorrow, so everybody get his or her witness here.

What are your two witnesses, Mr. Testa?

MR. TESTA: I also have an expert, your Honor, to testify.

THE COURT: What is he going to testify on?

MR. TESTA: With respect to the custom and practice in the industry in connection with the loading of these beams, and what should customarily be done. It all depends, if he doesn't use Captain Wheeler I may not have to use an expert, so it all depends on what happens here.

THE COURT: If he does not use him?

MR. TESTA: Yes.

THE COURT: What other witness would you have?

MR. TESTA: I don't have Dr. Tagliacambe, as

your Honor well knows. Unless I could get some other doctor, there was some other doctor he saw, I may not have anybody else.

MR. [illegible]ARGI: I will again consent to the introduction of Dr. Tagliagambe's report and stipulate that if he were here and testifying that's what he would say.

MR. TESTA: That's beside the point now.

THE COURT: Is the doctor still in the hospital?

MR. TESTA: No, he is not in the hospital. He is out of the hospital. He is convalescing.

THE COURT: You turned down an offer yesterday that plaintiff made to take his deposition on the ground that if he is well enough to take the deposition he is well enough to be here?

MR. TESTA: That is right, your Honor. I may get some other doctor if I can. If I can't I will just have an expert.

THE COURT: Let the record be clear you could take his deposition and you turned that down.

MR. TESTA: Because I don't think he is well enough to have a deposition imposed upon him in his own home after a heart attack, your Honor. That's the

only reason I turned it down.

THE COURT: Well, all right. Tomorrow morning at 9:30.

(Adjourned to 9:30 a.m., October 10, 1974.)

* * *

JACKSON O. KING,

vs.

DEUTSCHE DAMPFS-GES, 68 Civ. 3374

vs.

INTERNATIONAL TERMINAL OPERATING CO., INC., and COURT CARPENTRY & MARINE CONTRACTING CO.

October 10, 1974.
9:30 a.m.

(Trial resumes.)

(In open court, jury present.)

THE COURT: Good morning, ladies and gentlemen.

All right, the plaintiff may proceed.

MR. SERGI: Your Honor, I wish to read from the deposition of the third-party defendant, International Terminal Operating Company by Bob Pinto, whose testimony was taken on June 8, 1970, all counsel being present at that time.

THE COURT: That is the testimony of who?

MR. SERGI: Mr. Bob Pinto in the employ of International Terminal Operating Company.

THE COURT: All right.

MR. SERGI: Again, your Honor, yesterday I asked that witnesses, including expert witnesses, be excluded from the courtroom. I think your Honor's

order still stands?

THE COURT: Yes. If there are any witnesses in the courtroom, please go to the witness room. The clerk will show you where that is.

MR. SERGI: Bob Pinto, having first been duly sworn before a notary public of the State of New York hereby testifies as follows:

Mr. Solomon Cohen is the attorney of record who represents Mr.King, and as you know I am trial counsel, so Mr. Cohen was doing the inquiring and asking questions of Mr. Pinto.

Examination by Mr. Cohen:

"Q Will you state your name and address for the record?

"A Bob Pinto, 69 Woodhall Street, Brooklyn, New York.

"Q Mr. Pinto, by whom are you employed now?

"A ITO.

"Q What capacity?

"A I am a hatch foreman.

"Q On June 18, 1968 whom were you employed by?

"A ITO.

"Q What capacity?

"A As a hatch boss.

"Q How long have you been a hatch boss?

"A About ten years.

"Q And previous to that what were you doing?

"A I was a deck man.

"Q How long have you been on the waterfront as a longshoreman?

"A About 28 years.

"Q Are you a member of a local?

"A Yes.

"Q 1814?

"A 1814.

"Q On June 18, 1968, if you remember, were you employed -- what pier?

"A Pier 3, Erie Basin.

"Q That is in Brooklyn?

"A That is in Brooklyn.

"Q Now, on that day do you remember if there was a ship there in that pier by the name of the S.S.Trautenfels?

"A Yes, sir.

"Q On that day were you working aboard that vessel?

"A Yes.

"Q And were you working in hatch number 4 on

that day, if you remember?

"A That is correct.

"Q How many men were you working there with?

"A My full gang, which consists of 8 holdmen, 6 dockmen and 4 deckmen and myself. So it would be about 18 -- 19 men.

"Q The 8 holdmen were in the hold of number 4 hatch, is that correct?

"A Yes.

"Q Do you remember what you were loading into the number 4 hatch on that day?

"A Steel I-beams.

"Q Can you tell me what a steel I-beam is, please?

"A They use them for construction.

"Q How long would these steel beams be, if you know?

"A At least 60 feet long.

"Q And how wide?

"A Maybe about a foot wide.

"Q How did you get them into the hatch?

"A We used two booms and we used one crane that is stationary up on deck.

"Q Was that crane on deck or was it on the lighter alongside the ship?

"A It was on the deck of the ship.

"Q Does it belong to the ship or was it put on the ship?

"A It belongs to the ship.

"Q Was it a stationary deck like part of a boom?

"A It's on tracks. They can move it from one end to the other end of the hatch.

"Q After you were through using that crane did you take it off the vessel?

"A No.

"Q IT remains there?

"A Yes.

"Q And that is used for heavy lifts?

"A Well, for like five ton. They don't use them for anything over five ton.

"Q And these beams were about -- what did a beam weigh, do you have any idea?

"A Well, I know they were very heavy in order for us to be using these.

"Q How many beams would you pick up at a time with this crane?

"A One at a time.

"Q Did this ship also have stationary booms?

"A Yes.

"Q But you didn't use them at that time?

"A Yes.

"Q Did you use them for the beams, too?

"A Yes.

"Q And you also used the crane?

"A That's right.

"Q Now, where did you load them, into what level of the hold was it? Was it the upper 'tween deck, the lower 'tween deck or where?

"A It was the top deck or shelter deck.

"Q Upper 'tween deck?

"A Yes. Shelter deck or upper 'tween deck.

"Q When you got them into the upper 'tween deck do you remember how you stowed them? Did you stow them fore and aft or portside-starboard side?

"A Fore and aft.. That's the only way they would fit.

"Q How close to the port side did you get them? In other words, did you get them to the skin of the ship on the port and starboard side?"

May I, with consent of counsel, your Honor, inform the jury what portside-starboard side skin of the ship means?

THE COURT: I thought we had done that, had we

not?

MR. SERGI: All right.

"A No, we didn't go all the way inside.

"Q How far did you go?

"A Right in the square of the hatch.

"Q Did any of them extend under the coaming?

"A We went as far as we could underneath the coaming. Maybe they went a foot inside the coaming, to the best of my knowledge.

"Q On both sides?

"A To the best of my knowledge.

"Q Did you put these beams one right next to each other?

"A My orders were to put them as close to each other as possible and that is what I tried to do.

"Q Were these all close or were there spaces in between them?

"A I tried to get them as close as possible.

"Q But you don't know if there were any spaces between any of them?

"A As far as spaces I don't know if there were any spaces between because my orders were to get them close and that is what I tried to do.

"Q Did you put one beam on top of another?

"A No. One alongside of another.

"Q And nothing on top?

"A Not at that time.

"Q At which time?

"A Not at the time we loaded these I-beams. When we finished with these I-beams we stopped and we went to work in another hatch.

"Q Loading the same kind of cargo?

"A No. A different cargo.

"Q Well, I am not interested in that.

"A All right.

"Q In other words, there was only one beam put down on the deck of the shelter deck, is that right? And they were put together as close as you could?

"A One beam at a time.

"Q How many beams?

"A You were going to ask me how many beams did I put there?

"Q Yes.

"A If I am not mistaken, if I remember correctly, I think I must have put six on each side. I think it was 12 beams.

"Q Fromportside to starboard side in the square

of the hatch?

"A Yes.

"Q Did you put anything on top of these beams after that?

"A Later on in the day.

"Q When you put these beams down onto the deck, how did you maneuver them to get them together?

"A We maneuver them by using the booms of the ship and also the crane.

"Q You used both of these to maneuver them to get them down into place?

"A Yes.

"Q Now, you didn't inspect or did you inspect the beams after they were placed down to see how close together these beams were after you placed them?

"A Did I inspect them?

"Q Yes.

"A The only thing I know is I put them down there and I tried to get them in as close as possible.

"Q But there could have been spaces between these beams?

"A Maybe there could have been or maybe there couldn't have been.

"Q But you don't know?

"A I don't remember. As far as I know I tried to get them as close together. If you ask me about the space, if you are trying to find out how much space there was in between, like two inches or three inches, that I don't know.

"Q You wouldn't know that?

"A The most it could be -- I mean, how much space could I leave? The most I could leave would be maybe a couple of inches space.

"Q The most you could have left would be three or four inches between them?"

That was objected to and not answered.

"Q About how much space would you say there was between each beam, if you know?

"A The most would be three or four inches.

"Q Would most of these beams that were placed down, could they have been placed like a triangle, like some pointing to the left and some pointing to the right at the ends?

"A We tried to get them all even, sir.

"Q But you don't know whether you got them all even, do you?

"A As far as I remember they were even.

"Q Would you remember where these spaces were? Were they at the end of the beams, at the beginning of the beams or in the middle of the beams, these three and four inch spaces?

"A Well, these here beams are pretty straight. There is not too much of a bevel in them. They are pretty straight. I don't think they would leave room in the middle or room on the end. If there would be any room it would be where they take the chain off. In order to take the chain out, tha would be the only room that we possibly could have left.

"Q Where were these chains?

"A They were hooked up at the end.

"Q One at one end and one at the other end?

"A About three or four feet from each corner.

"Q From each end?

"A Yes.

"Q Now, did there come a time when you became aware or you were informed of an accident that happened there?

"A That particular day, no, sir.

"Q Did there come a time at any time that you became aware of an accident there?

"A Yes. When someone came down to the pier lookin for me.

"Q When was that, sir?

"A That must have been maybe a couple of weeks after the accident. I am not sure now.

"Q But at the time of the accident you were not aware of the accident?

"A No, sir.

"Q And when you were informed about an accident, the ship, I assume, had already left port?

"A That's right, sir.

"Q Now, when they were loading these beams where were you?

"A Right on deck and then part of the time I was down in the hold with the men.

"Q Part of the time you were up on the main deck and part of the time you were down in the hold?

"A In the upper 'tween deck.

"Q What time did you go to work that morning, Mr. Pinto?

"A 8:00 a.m.

"Q What time did you knock off? Did you knock off for a blow any time?

"A We knocked off for lunch at 12:00.

"Q In between time did you knock off for a blow, coffee or anything like that?

"A Maybe at 9:30 we knocked off for a coffee break.

"Q At about 11:30 that day do you know where you were?

"A I don't know if I was back in that hatch any more or if we were shifted out of that hatch.

"Q Do you know what time you were through with the beams?

"A I think it must have been a little after 11:00.

"Q Mr. Pinto, when you were through loading the beams did you go down after they were loaded to inspect them to see if they were put down properly?

"A I didn't inspect them because as I loaded them I was trying to put them in place properly.

"Q Mr. Pinto, I have a warm spot in my heart for all longshoremen and marine carpenters. Did you go down after they were loaded to see if they were loaded properly, just yes or no.

"A At the time we finished the beam I was down in the hold and then we were told to leave. I went up and I didn't go down there any more.

"Q After they were loaded you didn't go down there any more?

"A I didn't go down to inspect them.

"Q All right, good enough. That is an answer.

Now, this accident occurred after you left the hold, is that right?

"A It must have because I don't remember the accident.

"Q It happened at 11:30 and you were gone by 11:30, is that right?

"A Yes.

"Q After you left did you cover the hatch?

"A No, sir.

"Q You left the hatch open?

"A Yes.

"Q I suppose at the time of the accident in June at 11:30, was it a nice day or don't you remember?

"A I think it was a nice day but I really -- I don't really remember.

"Q How high were these beams?

"A The height of the beams? It must have been close to two feet high.

"Q And how wide?

"A I would say about 12 inches.

"Q Two feet high and one foot wide?

"A Yes.

"Q Did you have lips on top of them?

"A No. They were all flat.

"Q And this one foot was flat, right? In other words, you could step on it with your foot?

"A Yes, sir.

"Q And you placed these beams, if I remember correctly, on the deck of the number 4 hold, the upper 'tween deck of the number 4 hold, right? Did you place them right on the deck or did you place them on other cargo?

"A They were right on the deck. We just placed dunnage underneath.

"Q Who placed the dunnage there?

"A My men.

"Q What was underneath the dunnage?

"A Hatch covers.

"Q What was underneath the hatch covers?

"A Cargo down below.

"Q Were these wooden hatch covers?

"A Yes.

"Q When you placed the dunnage there did you put them together or did you leave spaces between them?

"A We spaced them.

"Q How far apart were they spaced, approximately?

"A About six feet apart.

"Q And this put you on the hatch covers?

"A Yes.

"Q Who put the hatch covers down?

"A We had covered the hatch. I am pretty sure we covered the hatch up.

"Q When you put the hatch covers down, were they placed together or were they also separated?

"A They were together.

"Q And they were wooden hatch covers?

"A Yes.

"Q What kind of cargo did you have underneath these hatch covers if you remember?

"A I don't remember. We could have -- it could have been general cargo. It could have been anything.

"Q These steel beams were on top of dunnage boards which were spaced about six feet apart, is that correct?

"A About that.

"Q Did you have occasion to walk on these steel beams at any time?

"A Yes, sir.

"Q And as you walked on these steel beams did you have occasion to notice the spacing between these beams or didn't you notice it?

"A I wasn't taking notice of that.

"Q Now, what is structural steel?

"A It's steel that they use when they put the buildings up.

"Q Is that what you call steel beams?

"A I don't know if they call it that. We usually call them steel girders and they were I-beams.

"Q There was nothing on top of these I-beams?

"A I didn't put anything on them.

"Q When you left at 11:00 --

"A There was nothing there.

"Q -- did you see any lashers go down to lash these steel beams?

"A I don't recall seeing the lashers because they were -- they weren't there when we were in the hatch. They couldn't be doing any work if we were still working.

"Q Did you see any seaman or members of the crew?

"A No. I didn't see anyone at that time. I don't remember that.

"Q Did you see them there in the morning?

"A Down the hatch I have no idea. There is a possibility. I am not sure.

"Q Who gave you the instructions to stow these beams?

"A My head foreman.

"Q What is his name?

"A He is deceased now. He passed on.

"Q What was his name?

"A Anthony LaFreto.

"Q Do you know if he came down at any time to observe the mannerisms in which these beams were being stowed?

"A No. He stood on deck.

"Q The only one down there was you, then?

"A That is right.

"Q Now, during the period of time that you were there you say there were no seamen or members of the crew or officers of the ship who came down to look at these steel beams with regard to how they were stowed?

"A Officers of the ship may have looked at them from the deck, but I don't remember any being down below.

"MR. SERGI: At this time I have no further questions."

And there were no further questions.

My next witness, your Honor, is Dr. Smith.

D A V I D S M I T H, called as a witness by the plaintiff, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SERGI:

Q Dr. Smith, are you duly licensed to practice medicine in the State of New York?

A Yes, sir.

Q Give this Court and jury the benefit of your professional education after leaving medical school.

A I interned at Bellvue Hospital where I was house surgeon on the fourth medical division -- fourth surgical division and I then became connected with the surgical staffs of the Fifth Avenue Hospital and the Sydenham Hospital and the Harlem Hospital.

I have been at Harlem Hospital now for the past 45 years and I am consulting surgeon there. I have also been connected with other hospitals, smaller hospitals in the city.

Q Do you have any field of specialization, doctor?

A I specialize in general and traumatic surgery.

I am a fellow of the American College of Surgeons and a diplomate of the American Board of Surgery and I am rated as a specialist in general and traumatic surgery by New York State.

Q Doctor, did you serve a term in the employment of the State of New York and in what capacity did you, if you did?

A Well, many years ago I was the medical examiner for a time. I also was in charge of the medical and nursing division of the Department of Welfare and I was in the Police Department as a police surgeon for 25 years. I retired in 1962 as the chief surgeon.

Q Doctor, will you explain to the jury what is traumatic surgery?

A Traumatic surgery is surgery which is necessitated by some type of an injury due to an accident or some sort of force or violence.

Q You say you were a fellow of the American Academy of Surgeons?

A The American College of Surgeons.

Q Will you tell us what that means, doctor.

A That means that I have specialized in surgery; that I have surgical appointments in hospitals; I have

written surgical papers and I have taken oral and written and practical tests and have passed them and then I have been certified to be a fellow, a competent surgeon.

Q Will you explain what being a diplomate means.

A The same idea. Your appointments are in surgery ; you devoted your practice to surgery; you have written papers on surgical subjects and you take examinations given by older surgeons, written, practical and oral, and you have passed them.

Q Thank you.

Doctor, did you have occasion to examine one Jackson King?

A Yes, sir.

Q When was the first time that you examined Mr. Jackson King?

A October 21, 1968.

Q Doctor, is it important during your examination to obtain a history of the alleged accident in order for you to properly examine and come to a medical conclusion?

A Yes.

Q Did Mr. King give you a history of his accident?

A Yes.

Q Would you explain to this jury the history that was given to you.

MR. TESTA: If your Honor please, this is not a treating physician and I am going to object to the history.

MR. SERGI: I withdraw the question.

Q Doctor, is it necessary for you as an examining physician to have as much medical history available to you as possible so that you may properly examine and come to a medical conclusion?

A Yes.

Q Did you have any medical history available to you from the treating physician?

A Yes.

Q What was the medical information you had at that particular examination and from whom did you have the medical history?

A Mr. Jackson told me -- Mr. King, rather, told me he had injured his left knee on June 18, 1968 when he slipped --

MR. TESTA: If your Honor please, this is the same objection I made before.

Q Don't tell us about the history --

THE COURT: Just a minute.

MR. SERGI: I'm sorry.

THE COURT: The question to you is whether you have a history taken by the treating physician, given to the treating physician by the defendant.

MR. SERGI: No, your Honor, my question is solely whether the doctor, and I direct my question to you, Dr. Smith, did you obtain a history of medical treatment, not anything to do with the happening of the accident and I think you said yes.

THE WITNESS: Yes.

Q Now, will you tell us who was the doctor from which you obtained any medical history.

A Dr. Tagliagambe.

Q Thank you.

Now, what was the medical history from Dr. Tagliagambe which you became aware of at that examination?

A The medical history I obtained from the doctor was mainly in the form of his diagnosis.

Q Whatwas the diagnosis of Dr. Mario Tagliagambe which you had in use during that first examination on October 21, 1968?

A He diagnosed that Mr. King had a contusion

and a sprain and an abrasion of the left knee and an internal derangement of the knee.

Q I think we all know what a contusion means. Will you describe and define, please, the medical definition of a sprain involving the left knee.

A A sprain to the knee means that the ligaments about the knee were injured. They were either stretched or torn.

Q What does internal derangement of the knee mean?

A That means that within the knee joint there was something wrong. It means that the exact diagnosis isn't known, but it's known that there is something abnormal going on within the knee joint.

Q Did Dr. Tagliagambe take any x-rays?

A Yes, he did.

Q What did the x-rays show?

A He said they were negative.

Q For the type of injury that we are talking about, contusion, sprain, abrasion of the left knee, internal derangement of the right knee, would x-rays indicate what these injuries are?

A No. The x-rays would be non-revealing.

Q What are x-rays used for?

A X-rays only show radio-opaque material. That is structures which do not allow the x-rays to pass through, such as bone, but we are talking about -- when we talk about sprains and contusions we are talking about soft tissues and x-rays do not delineate soft tissues.

Q And that includes the ligaments; they are not revealed in an x-ray?

A That's right.

Q Did Mr. King make any complaints to you at that time?

A Yes, he did.

Q And were complaints essential to your examination, doctor?

A Yes.

Q What complaints did Mr. King make to you at that time?

A He said that the knee -- the left knee was weak and felt numb and was painful.

Q Would you describe your examination.

A I examined the left knee and I made comparisons of that knee with the right one. The left knee showed a discoloration at the inner side which was about the size of a quarter. It was a brown

discoloration, a deep brown.

At the outer side of the knee there was another brown discoloration which was about the size of a dime.

The measurement showed that the left knee was slightly larger than the right and the left calf was slightly smaller than the right.

When I testedthe knee for movement he was able to straighten out the knee normally, but in flexing the knee, bending the knee backwards there was a very slight restriction of movement and when I attempted to move the knee from side to side there was an abnormal amount of movement. It moved from side to side much more than is normal.

Q Doctor, what was the significance in the measurement of the left knee which was larger than the right knee when you measured it?

A I t indicated an abnormal condition in that there was something wrong with the knee.

Q This is a larger knee than the right knee. Has that to do with swelling?

A Yes.

Q What brings about the swelling?

A Well, any number of conditions can bring about

a swelling. A blow, a tumor, a sprain, and arthritis; any condition.

Q With this man's history and the medical history that you obtained so far, could you relate what the swelling of the left knee was caused by?

A Yes. Taken in relation --

MR. TESTA: If your Honor please, now there has been no testimony with respect to any history and the doctor is being asked to relate a history that he found with a history that has not been related.

MR. SERGI: He doesn't listen to my questions. I said the history of the medical treatment and diagnosis given to this doctor by Dr. Tagliagambe. That's all I asked. I am not asking about any history of accident.

THE COURT: All right.

Q Doctor, please keep that in mind.

MR. TESTA: I am objecting to this, your Honor, so would your Honor give me a ruling on that.

THE COURT: What is the objection?

MR. TESTA: I am objecting to this doctor testifying that whatever he found was related to something based upon a history which he hasn't testified to, other than what he found in Dr. Tagliagambe's reports.

That's the nature of my objection.

THE COURT: Let me hear the question, Mr. Reporter.

(Question read.)

MR. TESTA: That is exactly the point. The question says with this man's history and with the medical history.

THE COURT: Change it.

MR. SERGI: I withdraw the question.

Q Doctor, having obtained from Dr. Tagliagambe's diagnosis that there was contusion and sprain and abrasion of the left knee and internal derangement of the right knee, could you then determine the reason for the swelling of the left knee when you examined him on October 21, 1968?

A I felt that the swelling of the knee was due to the contention and the sprain.

Q What accounts for the fact that the left calf, which is the injured member, was smaller than the right calf?

A I attributed that to the fact that he was not using the leg and knee normally.

Q That would be atrophy?

A That would be a mild degree of atrophy.

Q You state in your opinion there was abnormal lateral mobility indicating rupture of the medial and

collateral ligament. Would you describe what that is, doctor.

MR. TESTA: If your Honor please, I don't recall the doctor saying that. I think Mr. Sergi is testifying now. I don't recall the doctor saying anything about a rupture of the medial --

MR. SERGI: I withdraw the question.

Q What else did you find, doctor?

A In addition to the abnormal side to side movement which I spoke of before there was also a crepitus when you moved the knee; that is a grating sensation when I held my hand over the kneecap and moved the knee.

Q The abnormal lateral mobility which you found, what would that be indicative of, doctor?

A That means that the knee was unstable and the instability is due to the fact that the ligaments that support the knee were injured. They were either lax or stretched or torn.

Q Would you explain to this jury what ligaments you are talking about and where they are located.

A These ligaments are located at the inside of the knee and the outside of the knee. By outside I mean the lateral aspect, the external aspect.

Q What function or purposes do they serve?

A These support the knee joint. They keep it taut and they aid in the movement of the knee and they stabilize the knee so that the knee doesn't wobble and isn't weak. When there is abnormal side to side mobility of the knee, that means that these ligaments are faulty, there is something wrong with them. They are either torn or they are stretched. Those are the two conditions that bring about this abnormal mobility of the knee.

Q Could you tell what accounted for the crepitus that you say you found in that knee?

A The crepitus is due to a roughening of the underside of the kneecap as it moves over the lower end of the thigh bone.

Q Did you then make a determination as to the extension and flexion of the knee at that time?

A Yes, I did.

Q What did you find?

A He was able to extend the knee or straighten it out normally, but there was a mild restriction of his ability to bend the knee.

Q Did you x-ray Mr. King's knee at that time?

A Yes, I did.

Q What, if anything, did you find in the x-rays that you took?

A The underside of the kneecap was rough and that was what produced the crepitus.

Q Did you come to a diagnosis or a conclusion, doctor?

A Yes.

Q What was that?

A The diagnosis was that Mr. King had had a contusion, and an abrasion and a sprain of the left knee; that the ligaments at the inner side of the knee were torn, had been torn and that he had a condition of the kneecap which we call chrondromalacia.

Q Doctor, speaking of the tear of the medial collateral ligament, are these ligaments self-repairing?

A To some extent they can be. If it's a mild tear and the knee is immobilized, that is if it's not used, if it's put in a splint or a cast it can be self-repairing, but if it's a severe tear then you cannot -- it does not repair itself.

Q Will you explain to this Court and jury what you mean when you say chrondromalacia of the patella?

A Chrondromalacia means -- the word chrondromalacia refers to cartilage and the underside of the kneecap is cartilage. Chrondromalacia means that the cartilage on the underside of the kneecap was abnormal pathologically.

It was roughened. The circulation to the underside had been interfered with so that now changes were taking place in the underside of the kneecap. As I say, that's called a chrondrom.lacia.

Q As a result of your examination, doctor, did you come to a conclusion as to whether the condition of that knee was a permanent one?

A Yes. I felt that with the laxity of the knee and the chrondromalacia, that there would be permanent damage.

Q When did you see Mr. King again, Dr. Smith?

A I next saw Mr. King on November 6, 1969.

Q At that time did he give you any complaints?

A Yes. He stated that he had attempted to work, but he had to stop because of pain in the knee and that the knee was weak and when he walked it would collapse.

Q Doctor, the abrasion and sprain of the left knee and the tear of the medial collateral ligaments as you found them on your examination of October 21, 1968, in your opinion with reasonable medical certainty, is that of a painful nature?

A Was that what?

Q Was that painful?

A Yes.

Q Are there degrees of pain?

A Yes.

Q Would you give us a degree of the pain that you believe Mr. King was suffering on your first examination on October 21, 1968?

A Iwould say it was moderate.

Q Now, when he came to your office on November 6, 1969 he indicated to you he was still under the care of Dr. Tagliagambe; is that correct?

A Yes. sir.

Q Now, in his complaints at that time, will you continue telling us what he related to you.

A I missed that. I didn't get that.

Q He gave you certain complaints at that time.

A Yes.

Q You stated that he had attempted working and he had to stop.

A Yes.

Q What else did he tell you?

A He told me that he had trouble going up stairs.

Q What else?

Did he have any trouble or did he indicate that he had any trouble when he was walking?

A Yes. I said that, that he told me that his knee would collapse when he walked.

Q During your examination on November 6, 1969 did you then test or examine for extension and flexion?

A Yes.

Q What were the results of your examination?

A I found that the motions of the left knee were now worse than they had been previously, at my previous examination. Whereas extension was full or normal at the first examination, now there was a restriction of his ability to straighten out the knee and put it flat on the examining table and I estimated that decrease at about 10 percent.

Q Did you elicit any pain during your examination?

A Yes. The examination was uncomfortable for him.

Then in flexion, whereas before I had diagnosed a 5 percent limitation, now I estimated the limitation of flexion at 15 to 20 percent.

Q Did you re-x-ray him?

A Yes.

Q What did you find?

A Again, the under-surface of the kneecap was

rough and irregular.

Q What was your conclusion at that time?

A That he had a chrondromalacia of the patella and that he had the tearing of the collateral ligaments of the knee joint and that there was something wrong within the knee joint and that I felt that the knee joint should be opened and explored.

Q You mean surgery?

A Yes.

Q Do you know whether that surgery was performed?

A Yes, it was.

Q I hand you Plaintiff's Exhibit 1, doctor, which is the hospital record. I understand that he was admitted to Columbus Hospital and of course I am talking about Mr. King, on February 11, 1970. Now, at that time did Dr. Tagliagambe perform an operation on Mr. King's left knee?

A Yes.

Q Is the operation chart in the hospital record?

A Yes, it is.

Q Doctor, have you yourself performed this type of surgery?

A Yes, sir.

Q How many times would you approximate, roughly?

A Well, I can't tell you exactly, but for many years from time to time I have opened a knee joint and operated on it; I did what I had to do.

Q When Dr. Tagliagambe opened the knee joint and he got down to the bony area -- that's what he did, is that correct?

A Yes.

Q Will you tell us what he found.

A He found that the internal semi-lunar cartilage was torn and dislocated.

Q What is that? What is the internal cartilage you are talking about?

A Between the shin bone and the thigh bone in the knee joint there are two cartilages. They are called semi-lunar cartilages because they are shaped like a half-moon and they are about 3/8 of an inch wide and the outer side is an eighth of an inch thick, the inner side is about a sixteenth or thirty-secondthof an inch thick -- in other words, they are beveled, they slope, and the thigh bone sits on these cartilages which in turn sit on the top of the shin bone and that makes the knee joint. There is one of these cartilages at the inner side of the joint and another one of these cartilages at the outer side of the joint.

Q What is the function, doctor?

A The one on the inner side is called the medial cartilage. The function is to insure the proper function of the joint, the proper resiliency of the joint to absorb shock when you are walking, to prevent wear and tear on the surfaces of the joint. That would be the functions of it.

Q When the doctor found the tear of the internal semi-lunar cartilage, what, if anything, did he do?

A Removed it.

Q He removed --

A He removed the entire cartilage.

Q Now that the cartilage is removed, was anything used in replacing the now removed cartilage?

A No.

Q So that at the present time Mr. King has a left knee that no longer contains a semi-lunar cartilage?

A That's right.

Q Then I assume Dr. Tagliagambe closed up the leg, is that correct?

A He did what?

Q What did he do after he removed the cartilage?

A You sew up the capsule.

Washed the joint out with salt solution and he closed the immediate layer of the joint called the synovial membrane by sutures and then he sutured or sewed the capsule of the joint and then he sewed the skin.

Q I assume all this was done under general anesthesia?

A No. It was under spinal anesthesia.

Q So that Mr. King was aware of the operation at the time it was being performed?

A Yes.

Q Doctor, post-operative care in the hospital, is there a record of any medication that was administered to Mr. King during the remainder of his stay?

A Yes. After the operation he was given Demerol 50 milograms.

Q What is that for, doctor?

A Demerol is a narcotic used to relieve pain. That was given every four hours if necessary.

Q How many times did they administer it, do you know?

A I think it was given three times.

Q So that three times Mr. King following this operation was administered 50 miligrams of Demerol for pain?

RGpa

A Yes, sir.

Q When he was discharged from the hospital was he using any devices such as crutches or canes?

A I can't tell you. I don't know.

Q Doctor, did you have occasion to see Mr. King again after that operation?

A Yes.

Q When was that?

A June 5, 1970.

Q Did he indicate to you that he was still under the care of Dr. Tagliagambe?

A Yes.

Q What if any pains did Mr. King relate to you at that examination?

A He told me that he had pain in the left knee and in the left leg.

Q Anything else?

A He told me that he had difficulty going up and down steps and that he had difficulty in putting pressure on that left lower extremity because of the pain in the knee.

Q So that his complaints following the operation were very much the same as they were before the operation?

A Yes.

Q Is that unusual, doctor?

A No. It depends on the patient. Sometimes they are relieved and sometimes they are not.

Q In this case he was not?

A That's right.

Q Did you conduct an examination at that time?

A Yes, sir.

Q Tell us what you found?

A He had a two-inch scar at the inner side of the left knee and the measurements indicated that the left thigh was smaller than the right and the left calf was very much smaller than the right and both knees were the same measurement.

Q What is the difference in the measurements of the calf and the thigh?

A Well, due to the operation with a consequent lack of use of the extremity and with the pain and discomfort that he had after the operation there was increased lack of use of the left leg, left lower extremity so that the atrophy of the muscle was more marked.

Q Did you examine the mobility of the knee at that time also?

A Yes.

Q What did you find?

A Extension -- the findings were practically the same as at the time of the examination before the operation and that is his ability to straighten out the knee was less by about 10 percent and his ability to flex the knee was less by about 15 to 20 percent.

Q Did you again x-ray the left knee?

A Yes.

Q What did you find?

A The same chrondromalacia of the patella of course, the fact that the cartilage had been removed from the inner side of the knee joint indicated -- the fact that it had been removed meant that that portion of the knee joint was now narrower than it had been before.

Q Did you find any free calcified bodies in the knee?

A My x-ray showed a small calcific body in the knee joint.

Q What did that mean?

A I attributed that to either some calcification, attempt on the part of nature to regenerate some of the tissues that had been removed or in removing the cartilage the bone had been chipped.

Q Did you come to a conclusion at that time, doctor, after that examination?

A Yes.

Q What was your conclusion?

A That there was a permanent disability of the left knee and that in my opinion he could not perform any work that required climbing or standing for any length of time, jumping or anything like that.

Q Were you aware of the kind of work that Mr. King had been doing?

A I think he was a carpenter, a marine carpenter.

Q Were you familiar with the type of activity a marine carpenter engages in?

A Well, I suppose he would be doing carpentry work and he would be standing, he wouldn't be sitting, he would be traveling around the ship to take care of any carpentry that had to be attended to.

Q Were you also aware --

A And probably also work in the shop aboard the vessel.

Q Were you also aware that he had to climb up and down vertical ladders?

A In getting about the ship I would assume that he would have to do that.

Q In your opinion at that time when you examined him on June 5, 1970, you considered that he could not do that kind of work?

A That's they way I felt, yes, sir.

Q Was that the last time that you saw Mr. Smith?

A Mr. King.

Q I beg your pardon.

Was that the last time you saw Mr. King?

A Yes.

Q Doctor, other than the complaints of the left knee did you observe the general health of Mr. King during all those examinations?

A In a general way I did. I don't think he is a very robust individual.

Q Is he a healthy man normally?

A Well, I don't go over -- I didn't take his blood pressure or listen to his heart or anything like that.

Q He made no complaints of anything else?

A No.

Q Doctor, would you assume the following facts, please:

Assume that Mr. King at age 60, reasonably healthy, with no prior problems to any of his lower extremities including the left knee, except for an accident

that occurred to him in 1965 when he struck his left knee with a wrench and he was out of work for about three weeks and then had no further trouble after that. Assume that on June 18, 1968 Mr. King reported for work as a marine carpenter and was instructed to do his work as a marine carpenter in the hatches of the vessel; that in order to do this he had to climb down vertical ladders to various levels of the ship. Assume, doctor, that on that particular day he was instructed by his foreman to enter into a hatch and secure various large, heavy I-beams or H-beams which are structural steel used in putting up buildings. Assume further that when he came down the vertical ladder to the level where these beams and other cargo was that he started to walk across the top of these beams and that he came to a point where he left the area where he was walking and he turned and immediately upon making his turn his left leg went into a space between two beams; his leg went into that space up to the fatty portion of his leg or at the knee and that's where it stopped and that he immediately felt pain in that left

[illegible] by a co-worker, that he then walked back to the ship, climbed the ladder up to the main deck and received first aid by an officer of the vessel.

Assume further that he was removed from the ship and he was taken immediately to talk to Dr. Tagliagambe's office where a doctor examined and rendered some treatment in the form of heat and whirlpool. And assume further, doctor, that Dr. Tagliagambe diagnosed a contusion, sprain and abrasion of the left knee and internal derangement of the right knee and x-rays were negative. Assume further, doctor, that Mr. King continued under the care of Dr. Tagliagambe regularly for the entire year of 1968, intermittently during the year 1969 and part of 1970 until such time in February of 1970 he was hospitalized at Columbus Hospital. Assume further, doctor, that Mr. King was out of work, totally out of work until September of 1968, at which time he tried to work and he only worked two days, complaining that his leg bothered him and pained him so much that he had to stop working. Assume further that he intermittently tried to work and because his leg was bothering him he had to stop working. Assume further and include in this hypothetical question the information that you just read from the hospital record; the operation that was performed by Dr. Tagliagambe and the post-operative care, and include in this hypothetical question, your Honor, all of the examinations that you performed on

Mr. King, and assume also all of the diagnoses and the conclusions that you made during all of the examinations.

Doctor, can you tell us with reasonable medical certainty as to whether the accident which I just described to you was a competent producing cause of the injuries that were sustained by Mr. King as found by Dr. Tagliagambe, found by your vessel and also related in the hospital records?

A Yes.

Q Would you give us that opinion.

A The accident you have described was a competent producing cause of these injuries found by Dr. Tagliagambe and myself and described in the hospital record.

Q And, doctor, with reasonable medical certainty would the injuries as I have just described be competent producing causes of pain to Mr. King's knee?

A Yes, sir.

Q Even up to today?

A Yes, sir.

Q Doctor, with reasonable medical certainty do you have an opinion as to whether the injuries as we just described them to you are of a permanent nature?

A Yes, they are.

Q Will you render that opinion, please.

A They are of a permanent nature.

Q Thank you very much.

THE COURT: Mr. Molanphy.

CROSS EXAMINATION

BY MR. MOLANPHY:

Q Doctor, will you tell us who first asked you to examine Mr. King.

A Mr. King was sent to me by Mr. Solomon Cohen, an attorney.

Q At the time you first examined him was in October, I believe, 1968, is that correct?

A Yes, sir.

Q In answer to a question put by Mr. Sergi you said that your examination at that time showed some difference in the measurements in and about the knees, the left as compared with the right?

A Yes.

Q Do you remember which knee was larger than the other?

A The left knee was a quarter of an inch larger than the right knee.

Q In the calf you found a difference in measurements

as well?

A Yes. The left calf was 3/8 of an inch smaller than the right.

Q For the record, doctor, will you just tell us what the measurements of each knee was a s shown.

A Yes, the left knee was 13 3/8 inches in circumference and the right knee was 13 1/8 inches. The left calf was 11 inches in circumference and the right was 11 3/8 inches.

Q This indicates some swelling to you in the left knee, is that right?

A Yes, sir.

Q That I believe you mentioned, doctor, could also be due to arthritis?

A Yes.

Q Do you know how old Mr. King was at the time you examined him?

A I'm sorry, I don't. I don't have my card.

Q Would you assume with me, doctor, that he was approximately 61 years of age?

A Yes, I would.

Q And you expressed some familiarity with the

As a carpenter as I said before I'm sure he had to do carpentry work in various parts of the vessel and he had to get about and undoubtedly he did some work in his own shop.

Q Would you, doctor, reasonably expect a man of 60 years of age, employed in that line of work would have some arthritis in and about his knee?

A I would expect so.

Q Did you feel as a result of your first examination, doctor, that Mr. King was disabled?

A Yes.

Q And because of a tear of the medial collateral ligament; among other things?

A Well, that was among the reasons I felt, and I felt he had something wrong with that knee joint and needed more treatment for it and that he was disabled.

Q Did you, doctor, mention before that sometimes these tears can beself-repairing?

A Yes. If you immobilize the knee in a cast or a splint, if the tear isn't too large it can repair itself.

Q You concluded in your report, did you not, "There will be some permanent partial disability."

A Yes.

Q Permanent?

A Yes.

Q So can we assume, doctor, that as of October 1968 you were of the opinion that this would not be a self-repairing situation?

A That's right.

Q And could only be corrected by surgery?

A Well, at that time I didn't mention surgery.

Q Could it have been corrected any other way?

A I thought if he wore a support that it would help him.

Q But it wouldn't repair itself?

A It wouldn't repair itself because I felt there would be permanent damage, but you have to take other factors into consideration. His age was a factor in the non-self-repairing. The younger you are the better the healing. As you say, he was about 60. I knew he was elderly, I didn't know just the exact amount. His appearance didn't tell me that it was going to heal up.

Q Doctor, do you think the condition of his knee worsened during the succeeding year and a half before he had the operation?

A Yes, it did.

Q You rendered a report to Mr. Cohen following your examination, didn't you, doctor?

A Yes, sir.

Q In which you said that physiotherapy was required?

A I thought that would help him.

Q Did you tell Mr. King this?

A No, I didn't. I merely put it in my report to Mr. Cohen.

Q Did you make any recommendations to Mr. King at all?

A I don't believe I did.

Q Doctor, as of the time of your examination in June of 1970, that was your last examination, is that right?

A Yes, sir.

Q That was the one following the eventual surgery?

A Yes.

Q Did you consider him disabled from work as a marine carpenter at that time?

A Yes, I did.

Q Were you advised that Mr. King in fact was actually working as a marine carpenter at that time?

A At that time I did not know it.

Q Did you ask him at that time?

A I do not think I did.

Q Did you make certain recommendations in your report to Mr. Solomon J. Cohen?

A Yes, I did.

Q You recommended exercises?

A Yes. In order to build up the muscle of the thigh.

Q Moist packs and things of that nature?

A No, just the exercises.

Q Did you tell Mr. King that?

A No, I didn't.

Q Were you told about a prior injury to Mr. King's left knee?

A Yes.

Q As of the time of your examinations of Mr. King you had reviewed, I take it, the hospital records of the injury of June 18, 1968, had you not?

A When did you say I saw them?

Q When you examined Mr. King --

A I saw them, but I have no recollection of when I saw them.

Q Those were the records of the hospital, the hospital records that you have in front of you now?

A Yes.

Q And you considered those important, did you not, in reaching the conclusion which you stated here?

A Yes.

Q Doctor, did you ever see any records pertaining to the injury of 1965 to Mr. King's left knee?

A No, I did not.

Q Did you ask to see them?

A No, sir.

Q Did you consider those to be important?

A No, I didn't.

Q Doctor, the branch of medicine dealing with the joints and ligaments is a particular specialty, is it not?

A Yes.

Q What speciality is that?

A That's called orthopedics.

Q That's a specialty recognized in the medical profession which is separate and apart from your own?

A It's a separate specialty, yes, sir.

Q You were not an orthopedist?

A No, sir.

Q Have you ever taken the examinations to be an orthopedist?

A No, sir.

Q Have you ever taken the examinations to be an orthopedist?

A No, sir.

Q Since your examination of Mr. King in June of 1970 you have had no further medical contact with Mr. King at all?

A That's true. I have not seen him since.

MR. MOLANPHY: Thank you.

MR. HOCKETT: No questions, Judge.

THE COURT: Mr. Testa?

MR. TESTA: Yes, your Honor.

CROSS EXAMINATION

BY MR. TESTA:

Q Dr. Smith, how many times did you see Mr. King altogether?

A Three times.

Q All three examinations were for purposes of your testifying in Court today, were they not, doctor?

A Yes, sir.

Q You have already told Mr. Molanphy that you did not recommend any treatment to Mr. King.

A Not to him personally.

Q And in fact you did not give Mr. King any

treatment, did you?

A That's a fact.

Q You have indicated that you obtained medical information from Dr. Tagliagambe.

A Yes.

Q Were you aware of the fact that Dr. Tagliagambe felt that Mr. King could go back to work in September of 1968; did you know that?

A If I did I don't recall it now. But I would accept --

MR. SERGI: Excuse me, doctor.

Your Honor, if counsel is reading from some medical report which is not in evidence and he is making reference to it, I must object. If he is going to refer to it then I think all counsel should have the opportunity to see what he is referring to, so he should offer it in evidence.

MR. TESTA: If your Honor please, Dr. Smith has already testified that he saw Dr. Tagliagambe's reports and saw the diagnosis of contusion and sprain and abrasion that was made on these reports and based his own findings upon this. I think this is a speechless objection to make at this time when I am asking if he knew that Dr. Tagliagambe felt that he could go back to

work in September.

MR. SERGI: I press my objection, your Honor.

THE COURT: You can ask him if that is contained in a doctor's report.

MR. TESTA: That is what I am asking him if he has such a report before him or if he saw such a report. That is exactly the question.

MR. SERGI: If there is a report, your Honor, if there isn't any report that is a speechless question. You just can't say did you see a report and there is no report.

MR. TESTA: If your Honor please, I think this is perfectly legitimate cross examination. If Dr. Smith has this information before him I think I am entitled to ask him that.

THE COURT: Yes, you can ask him if that's contained in a doctor's report that he received.

MR. TESTA: That's what I asked him.

A I have no recollection of that statement, but if you say it's there I will accept it.

Q What records did you bring with you today, Dr. Smith?

A I didn't have any records except copies of my old reports and also a copy of the previous testimony. I

had no records at all.

Q May I see what records you brought with you today, then.

You just brought your own three reports that you have given to me?

A Yes.

Q What did you base your testimony on where you said that the information that you had from Dr. Tagliagambe was with respect to the fact that Mr. King had contusions, sprains and abrasions of the left knee; where did you get that information?

A To the best of my recollection from the report of Dr. Tagliagambe.

Q Where is that report that you base that statement on?

A I haven't the faintest idea at this time.

Q You also testified that Dr. Tagliagambe's x-rays were negative. Where did you get that information, doctor?

A Probably from the report that I saw. I don't know. I don't have the report.

Q Now, your initial examination of Mr. King was on October 21, 1968. At that time you found two brown discolorations?

A I found what?

Q You found two brown discolorations.

A Yes, sir.

Q Based upon your examination of Mr. King on October 21, 1968 you found an abnormal lateral mobility.

A Yes, sir.

Q Did you move his knee with your hand?

A Yes.

Q That's the basis for that diagnosis?

A For that finding.

Q Yes.

Crepitus, that's a sound, isn't it, doctor?

A Well, it used to be considered a sound, but now it's used interchangeably with the word fremitus, so that it can either be a sound or a feeling.

Q Did you hear it or did you feel it?

A I felt it.

Q Atrophy is something that happens from non-use, isn't it?

A Yes, usually. It can happen for other reasons also, but usually non-use.

Q If a person uses his leg and walks around that condition will go away?

A Yes.

Q It will be restored to normal, will it not?

A Yes. Under ordinary circumstances it would.

Q Right.

Now, this type of an injury, doctor, an injury to the ligaments of the knee, semi-lunar cartilage I believe you described it. That's a very common injury, isn't it?

A Which one, the ligamentous injury or the cartilage injury.

Q Both.

A Well, it depends on the occupation of the individual. A person such as you or me, we wouldn't have that condition. But you take a football player, that's quite common with them, or a basketball player, it's very common with them.

Q It's quite common with most athletes, isn't it, doctor?

A Yes.

Q This type of operation is quite common, too, isn't it?

A Yes.

Q What they do is they remove the cartilage,

Q And they go right back to playing ball again, do they not?

A Some do and some don't.

Q Well, most of them do, do they not, doctor?

A Yes. Most of them do. These young athletes, and they recouperate very well.

Q So that it's an operation that is considered a beneficial type of operation where you have a torn ligament of some kind?

A Yes.

Q Or a cartilage?

A Certainly.

Q The therapy, then, is to remove the torn cartilage?

A That's right.

Q And this enables the man to walk again?

A And maybe to play, exactly.

Q And maybe to play, right, and he can do that normally, can't he, doctor?

A Well, it depends on the individual. It depends upon the particular operation, whether it's successful or not. Some are able to measure up to their former selves and some are not.

Q Would you say the majority of the people that

have this operation do go back to working or playing ball or whatever they were doing?

A Yes.

Q That's a well-known medical fact, isn't it, doctor?

A Yes.

Q Now, you read the report from the hospital of the way the operation was performed by Dr. Tagliagambe.

A Yes, sir.

Q Was it performed correctly in your opinion, doctor?

A Yes.

Q There is nothing in the hospital record that would indicate that the operation was not performed correctly, is there?

A No. I think everything was correctly done.

Q When you saw Mr. King on June 5, 1970, that was after Dr. Tagliagambe had operated on his knee?

A Yes, sir.

Q I believe you said that Mr. King told you he was still under Dr. Tagliagambe's care at that time.

A If that is in the report. I don't have any independent recollection.

Q Were you aware of the fact that Dr. Tagliagambe

said he could return to regular work on May 29, 1970?

MR. SERGI: Same objection, your Honor. Unless he is referring to a document I object to his submitting suspicious questions. Does he have documentation of what he is saying or is he just making it up? I object to it unless he shows us what he is reading from.

THE COURT: All right, show defense counsel what you are reading from.

MR. TESTA: I am asking the doctor if he is aware of this. Now he can say yes or no.

MR. SERGI: I object to the question, unless we know that the doctor said that, and I want to see where he said it.

THE COURT: Yes.

Q Dr. Smith, I show you a report dated May 24, 1970 and ask you if that report is the report of Dr. Tagliagambe.

MR. SERGI: May we have it marked for identification, your Honor?

THE COURT: Yes.

(Defendant Court Carpentry Exhibit A marked for identification.)

MR. SERGI: Now I have a further objection,

your Honor. Counsel is showing the doctor a document which is not in evidence and he is asking him to read it. If he wants to offer it I have no objection.

MR. TESTA: First I would like to ask him a question, if I may.

MR. SERGI: You can't ask him a question unless you show it to him and it's not in evidence, your Honor.

THE COURT: He can first ask him if he has seen the report before.

Q Have you seen that report before, Dr. Smith?

A I have no recollection of having seen this.

Q Does that report indicate that Mr. King could go back to work on May 24, 1970?

MR. SERGI: Objection, your Honor.

THE COURT: Sustained.

MR. SERGI: Why doesn't he offer it? I have no objection.

MR. TESTA: All right, I will.

MR. SERGI: While we are at it, your Honor, I made a demand upon Mr. Testa, who is the attorney for Court Carpentry, to produce any and all medical reports of Dr. Tagliagambe.

MR. TESTA: I object to any speeches during the cross examination. This is my cross examination.

THE COURT: Just a minute. The jury is excused. We are going to take a recess.

(Jury not present.)

THE COURT: All right, the witness is excused for ten minutes.

MR. SERGI: May I finish what I started?

THE COURT: Yes, just a minute.

All right, now, what is this all about, Mr. Sergi?

MR. SERGI: Your Honor, I served a notice to produce upon Mr. Testa, to produce any and all medical records of Dr. Smith which he has in his possession.

THE COURT: Dr. Smith?

MR. SERGI: I'm sorry, Dr. Tagliagambe,w hich he has in his possession

Now, I know he has them in his possession. I have seen them before the trial started and obviously I have seen them again, he is using them. Now, I ask him to produce them so that all counsel may read them right here and use them if they can.

THE COURT: I don't understand this. You didn't have access to these reports?

MR. SERGI: No, I didn't, your Honor. I do not and did not have access to all of the reports which

are in the possession of Mr. Testa and, therefore, I served upon him a notice to produce at this trial all of those reports.

MR. TESTA: I would like to say --

THE COURT: You served a notice on him to produce those?

MR. SERGI: Yes, sir.

MR. TESTA: I had no such notice, your Honor. I would like to see the notice to produce that he says was served. No such notice was ever served on my office.

MR. SERGI: Does your Honor have the Court file?

THE COURT: Yes.

MR. SERGI: The original would be in there.

THE COURT: All right, we will take a recess while you find it.

(Recess.)

* * *

(Jury not present.)

THE COURT: All right, Mr. Sergi. I gather you found the notice to produce directed to the third-party defendant Court Carpentry.

MR. SERGI: Yes.

THE COURT: What do you say, Mr. Testa?

MR. TESTA: I haven' seen it, your Honor, so that I don't know I can say anything until I see what he is talking about.

THE COURT: This is the original in the file I gather.

MR. TESTA: This is not a notice to produce anything at this trial, it's just a general notice to produce dated January 19, 1972.

THE COURT: Did you ever produce them pursuant to that notice?

MR. TESTA: I have no idea, your Honor, whether anything was ever produced pursuant to this notice.

THE COURT: You have no idea? I don't understand what that means.

MR. TESTA: I just don't know. I see this notice to produce here, but I don't know whether anything was ever produced back in 1972, whenever this was served, or since then. As I say, this is not a notice to produce something at the trial.

THE COURT: It says at the trial.

MR. SERGI: It says, as I read it, your Honor --

THE COURT: I read it.

MR. SERGI: And it does say at the time of t is

trial. Read number one.

MR. TESTA: I don't know anything about that, your Honor, but I will be happy to produce whatever medical reports I have in my file which Dr. Smith has already testified to anyway. He read the doctor's operative report, Dr. Tagliagambe's operative report right out of the hospital record.

MR. SERGI: Not all of Dr. Tagliagambe's reports, your Honor. He referred to just one.

MR. TESTA: I will be glad to produce whatever reports I have in my file, your Honor.

MR. SERGI: That's fair enough.

MR. TESTA: Including the operative record which I have which Dr. Smith read from.

MR. SERGI: Can I have it now?

THE COURT: I hope we are not going to have now a long delay in the trial while you read reports, Mr. Sergi.

MR. SERGI: No, I just want them. I haven't seen them.

Are you finished?

MR. TESTA: If your Honor please, I am in the middle of a cross examination. I don't think it's proper for Mr. Sergi to stand up in the middle of my

cross examination and say he served a notice to produce. He did and I have them here and I am producing them, but I see no reason why we should interrupt my cross examination at this point or why he should make a speech in front of the jury.

MR. SERGI: I will read them while he is examining.

MR. TESTA: I would like to finish my cross examination.

I have no objection to him seeing them. They are routine reports, but the one I have of the operation is the one Dr. Smith read from the hospital record.

MR. SERGI: I would just like to see them.

THE COURT: As I understood the doctor's testimony he didn't have any recollection of having seen it.

MR. SERGI: He had a recollection of seeing one. Now I would like to see the rest of the reports of Dr. Tagliagambe.

MR. TESTA: I will show them to Dr. Smith.

MR. SERGI: No, I want to see them, not Dr. Smith.

MR. TESTA: I don't care what you want. I don't think you are running this trial.

MR. SERGI: I have a notice to produce and I would like to see them.

MR. TESTA: I have produced them.

MR. SERGI: Let me see them.

THE COURT: The Court's ruling is that they are not to be produced or even used at this time. This is not the time to be calling for any pre-trial discovery in this case.

MR. SERGI: This is not a pre-trial discovery, your Honor, it's to produce at the time of trial so I may see them, not just so he can hold them in his hand. What is the good of a notice to produce if I can't see what I asked him to produce? What is so sacred about Dr. Tagliagambe's reports? Now, we know he can't come into Court. If I want to use the reports and I make an application to this Court that Dr. Tagliagambe is unavailable because of his illness, I will ask the Court to rule whether they are admissible or not, but I don't know whether I am going to offer them, I want to see them first.

THE COURT: On what ground are they going to be admissible? I thought the doctor said he did not recall seeing a particular report, the last one that was shown to him. Which one was that, Mr. Testa?

MR. TESTA: That's the report of May 24, 1970, which is now marked Exhibit A.

MR. SERGI: May I see the report, your Honor, pursuant to my notice to produce? I promise not to destroy them. I will give them back.

MR. TESTA: I think this --

THE COURT: I don't think there was a suggestion that you would destroy them.

MR. TESTA: I don't think this is the proper time for this, your Honor, that we should hold up a trial.

THE COURT: You should have produced those reports in 1972 when you got the notice and we tried this case last year and you were here and you could have produced them.

MR. TESTA: I was not in that trial, your Honor. You severed it.

THE COURT: I know, you were severed on the day of the trial and here we are another year later and you still haven't shown to the plaintiff's counsel documents which are certainly vital to this trial.

MR. TESTA: I will be happy to show them to him but I don't think we should interrupt the cross.

THE COURT: Well then, show them.

MR. SERGI: Can I read them while he continues

his cross examination? Thank you.

MR. TESTA: I want to use them.

MR. SERGI: I will give them right back to you.

MR. TESTA: Thank you.

MR. SERGI: Do you have the last one which was marked as an exhibit?

THE COURT: Yes, it's right there. Mr. Hockett has it.

MR. MOLANPHY: Your Honor, may I be heard on something else while they are straightening out that matter?

THE COURT: Yes.

MR. MOLANPHY: Yesterday at the close of the day when we discussed the prospective testimony of Captain Wheeler, I don't know whether I asked your Honor if I could make that in the form of an offer of proof just for the sake of my record.

THE COURT: Did we rule on it? Did we rule it out? You said you didn't know whether you were bringing him. I don't think you said.

MR. MOLANPHY: I would like at this time to make it in an offer of proof such as we did at the first trial.

THE COURT: You don't have an offer of proof

until I saw you can't put that testimony on. I understood you to say that you did not know whether you would be calling Mr. Wheeler or not. Did we rule on it? If so, please refresh my recollection. I don't recall it.

MR. SERGI: May I refresh your recollection, your Honor?

THE COURT: Yes.

MR. SERGI: Since I objected to the use of his expert against the plaintiff inasmuch as I argued to the Court that it didn't make any difference what the expert argued, whether the stevedores loaded in the customary way or not --

THE COURT: Yes, as to the plaintiff's case.

MR. SERGI: Yes, then your Honor ruled that he could not use it against the plaintiff and then Mr. Molanphy decided as I recall his statement, "Well, then, I don't think I will use him."

THE COURT: Yes. I think that was what occurred. Is that right, Mr. Molanphy?

MR. MOLANPHY: I think that is substantially so, your Honor, but in reviewing the testimony of the first trial I realized that this at that time was made in the nature of an offer of proof and for the sake of my record I would like to make that same offer of proof at

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this time, namely the offer to produce as a witness Captain Wheeler on the plaintiff's case --

THE COURT: For what purposes?

MR. MOLANPHY: In order to testify as to the customary method of loading steel I-beams aboard a vessel.

THE COURT: What's the relevance of that to a claim that the vessel was unseaworthy?

MR. MOLANPHY: On this basis, your Honor, that evidence as to what is customarily done is regarded by the Court as some evidence of what should be done.

THE COURT: On a negligence claim. I am talking about an unseaworthiness claim.

MR. MOLANPHY: I submit that the same principle holds true on unseaworthiness.

THECOURT: The same principles apply to unseaworthiness that we have in negligence?

MR. MOLANPHY: Regarding the type of testimony that is admissible and that is pertinent.

THE COURT: On what issue?

MR. MOLANPHY: On the reasonableness of the stow.

MR. SERGI: I think that's a factual determination by the jury and not by any expert witness, your Honor.

That's what the jury is here for, to determine whether -- if the space was there and if the space was there, whether this was an unreasonable place to work. That's for the jury to decide and not for an expert to tell us that it was done in the customary way. That is of no consequence. We know from the Elsner case it doesn't matter how that condition got there and who created it. If the condition is there and the jury finds that the area is not reasonably safe, that is unseaworthiness, not the fact that some stevedore expert says that they loaded it properly or didn't load it properly. That's of no consequence between the plaintiff and the defendant in this case. It may be of consequence between the defendant and the third-party defendant, but I think if he is allowed to put it in in the plaintiff's case it may cloud the consideration of this jury in the primary case of the plaintiff against the defendant in that they might accept the stevedore expert's opinion. That is not the factual determination in the plaintiff's case and I must object very strenuously. I think the Court ruled on that yesterday. We had the same argument and your Honor said, "No, you don't put it in in the plaintiff's case." Mr. Molanphy agreed and said, "All right, then, I will not." Now he presents the same argument.

I don't think the Court should change its ruling. Nothing new has happened or nothing new has been argued.

THE COURT: All right, Mr. Molanphy.

MR. MOLANPHY: The purpose of my current statements, your Honor, were not to repeat the arguments. I thought I was aware of your Honor's ruling that this would not be germane on the case between the plaintiff and the shipowner.

THE COURT: You say you agreed?

MR. MOLANPHY: No, your Honor, I thought that was your ruling as of yesterday.

THE COURT: Yes, it was.

MR. MOLANPHY: The one thing I failed to do I believe as of yesterday was to make it formally in the nature of an offer of proof such as I did at the first trial.

THE COURT: Let me ask you this: Do you have any Second Circuit case that says that such testimony by an expert is admissible in a case in which the claim is unseaworthiness; that you can call an expert on unreasonableness?

MR. MOLANPHY: I think Judge Hand wrote that years ago, your Honor, but I don't have it with me now.

THE COURT: That seems to be your trouble with this case. We have had all these major propositions of law cited to the Court by counsel on all sides unsupported by any authority at all. It would be helpful to have a case once in awhile from the Second Circuit in support of your position.

MR. MOLANPHY: I am sorry to do it this way, your Honor. I just thought I was correcting a formality that I neglected to make yesterday.

I am making a record.

MR. SERGI: He is just making a record. That's all I intended to do at this point.

MR. MOLANPHY: I didn't want to disrupt things before the jury. That's what I was trying to eliminate.

THE COURT: The point is if you make an offer of proof and there is some contest about it and you claim the offer is relevant on a particular issue, it does seem to me helpful to have some authority that would help persuade the Court one way or another and let's not have these off the top of one's head arguments without authority. Now, as I have said we tried the case before and here we are on a re-trial of the matter with the same problem, not a single authority for any of these propositions that are argued.

MR. SERGI: Your Honor, may we finish with the doctor and if we have to argue this again we can argue it during the recess?

THE COURT: Yes. We will continue during a recess later.

MR. SERGI: Thank you.

MR. MOLANPHY: Thank you, your Honor.

THE COURT: See if you can find that case.

MR. MOLANPHY: Yes, your Honor.

THE COURT: What about these reports, have you finished?

MR. SERGI: I examined them and I gave them back.

THE COURT: Are you ready to proceed, then, Mr. Testa?

MR. TESTA: Yes.

THE COURT: All right, you can bring in the jury.

Remember that these reports are not in evidence, Mr. Testa, so let's not have any reading from these reports or documents.

MR. TESTA: One of them is in evidence.

MR. SERGI: It's for identification. It was not in evidence.

MR. TESTA: I offered it in evidence. I think Mr. Sergi suggested he wanted it in evidence and I offered it.

THE COURT: All right, we will admit it, then, in the presence of the jury.

(Jury present.)

MR. TESTA: I offer this report, which is Third-Party Defendant A for identification in evidence.

MR. SERGI: No objection, your Honor.

(Defendant Court Carpentry Exhibit A received in evidence.)

CROSS EXAMINATION

BY MR. TESTA (CONTINUED):

Q Now, Dr. Smith, you have already testified that Dr. Tagliagambe performed the operation correctly on Mr. King's knee, is that right?

A Yes, sir.

Q You base that upon your observations of the way the operation was performed as indicated in the hospital record?

A Yes.

Q Would you say that Dr. Tagliagambe got a good result as a result of performing this operation?

A Surgically speaking, yes.

Q He did?

A Surgically speaking.

Q Now, you have already indicated that you are not an orthopedist is that correct?

A That's right.

Q If you say that Dr. Tagliagambe got a good result surgically speaking as you put it there would be no reason why Mr. King could not return to work, then, would there?

A No, that doesn't follow. That's not logical.

Q Well, you saw Mr. King after the operation was performed?

A Yes, sir.

Q Was he walking all right at that time?

A No, he wasn't. He was having difficulty with his left knee.

Q Now, as far as the type of work that he does, do you know all the various job categories of marine carpenters and lashers?

A No. I am not familiar in detail with the jobs that they have to do.

Q All right, do you have any idea at all what they are supposed to do other than to use a hammer and nails and lash?

A I can only conjecture knowing what a carpenter has to do.

Q What does a carpenter have to do?

A Well, he would repair a door that was unhinged perhaps. He might -- if somebody needed a box he would make a box for them. If a rail had to be replaced he might make another rail and replace the rail. Anything having to do with wood.

Q Now, in your opinion could Mr. King do that when you last saw him?

A Yes, he can do carpentry work.

Q He can?

A Yes.

Q That's his occupation and you knew that at that time, didn't you?

A Yes.

MR. SERGI: Objection, we know that that is not his occupation. His occupation is a marine carpenter, your Honor, and we know that there is a difference.

MR. TESTA: I am just trying to find out what the doctor knows and whether the doctor knows the difference or not.

Q Apparently, doctor, you do not know the difference, is that it?

RGpa

A Apparently not.

Q But as far as general carpentry work is concerned he could do that in your opinion?

A Yes.

Q Would it be fair to say that you made this finding of unfit for work involving standing and climbing based upon only three examinations of Mr. King?

A Yes.

Q And without any knowledge of what was involved in his job title or capacity, is that a fair statement?

A Yes.

Q At that time you didn't even know if there was any climbing involved in his work, did you, doctor?

A I surmised that there was.

Q You say you surmised that there was?

A Yes, that's right. I did not ask him particularly about it.

Q Did you think it was important in making this finding of his permanent disability to know whether he had to do any climbing or not insofar as his job was concerned?

A Yes.

Q But nevertheless you didn't ask him?

A That's right.

Q In your opinion as of the last time you saw Mr. King, which was in June of 1970, could he perform general carpentry work?

A If he didn't have to remain on his feet for any length of time or do any climbing he could do general carpentry work.

Q In your opinion as of the last time you saw him in June of 1970 could he perform other type of work?

A Yes. He could sit at a desk. He could do work not requiring traveling. He could undoubtedly do some light porting work.

Q Would it be fair to say that he could do any kind of work that did not involve climbing?

A Standing or climbing.

Q Standing or climbing.

A Yes.

Q Now, you have indicated to me before that the majority of these operations produce a favorable result, did you not?

A I said it depended on the case and we were talking about young people in contradistinction to elderly people. In young people, by far the majority do very well.

Q What was there about Mr. King's case that indicated to your mind thathe could not work?

A His age for one thing.

Q Anything else?

A I think that was the major factor.

Q It was the major factor?

A The reparative processes are not the same as in a younger person.

Q And at age 63 he also had arthritis, did he not?

A I didn't see any.

Q Would he have had arthritis at age 63?

A I don't doubt that he has some, but I didn't see any in my x-rays of the knee.

Q Would that be a fact as to whether or not he could stand or climb?

A Yes.

Q In any event, there are many types of work he could do, then, isn't that so, doctor?

A Yes, sir.

Q When you say you found him to be not very robust as far as his general health is concerned, what did you mean by that, doctor?

A I mean he doesn't look as well as you or I do. He looks his age you might say. In other words, he doesn't look as if he has a great deal of stamina or endurance.

Q Did you give him a general physical examination?

A No, sir.

Q That was just based upon observation?

A Yes, sir.

Q Just how he looked to you?

A Yes, sir.

Q Any finding that you made or any opinion that you gave is as of the last time you saw him in June of 1970, isn't that so, doctor?

A Yes.

Q You have no idea what his condition is today, do you?

A No, I do not.

MR. TESTA: All right, I have no other questions.

Here are your reports back, doctor, that I took from you.

MR. SERGI: Would you mark that for identification.

(Plaintiff's Exhibit 7 marked for identification.)

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REDIRECT EXAMINATION

BY MR. SERGI:

Q Doctor, I show you Plaintiff's Exhibit 7 for

identification and ask you whether you have ever seen that.

A Yes, I have.

Q What is that?

A This is a report by Dr. Tagliagambe which I had on the occasion of my first examination.

Q So that's the report that you referred to on your first examination where you obtained the diagnosis then rendered by Dr. Tagliagambe?

A Yes.

Q Now, doctor, in the questioning by Mr. Testa you said that the operation was surgically correct. How about medically?

A Well, medically and surgically it was a good operation, but the patient doesn't always -- isn't always cured by a successful operation.

Q I am talking about this patient, Mr. King. Was he surgically cured by this operation?

A No.

Q You have not seen Mr. King since your last examination of 1970. Keeping in mind all of the examinations and all of the reports and the operational charts, with reasonable medical certainty and assuming further that Mr. King is complaining at this time of

continued pain and continued limitation in the use of that leg when he stands on it and when he climbs. In your opinion now is that condition the same today as it was in 1970?

MR. TESTA: I am going to object to that, your Honor. The doctor hasn't seen the man since June of 1970.

MR. SERGI: I just said that, didn't I?

Q Couldn't you render an opinion without having seen him as to whether the condition remains the same?

MR. TESTA: That is exactly what I am objecting to.

THE COURT: He is asking the doctor whether he can render an opinion and the doctor can say whether he can or not.

MR. TESTA: As long as he doesn't render the opinion.

Q Doctor, did you say the condition was permanent?

A Yes, I did.

Q Did you say that as a result of your last examination in June of1970 the condition was permanent?

A Yes.

Q What does that mean?

A That means he will always have a disability involving that knee.

Q And that means today?

A Yes.

Q And that means for the rest of his life?

A Yes.

MR. SERGI: I have no other questions.

MR. TESTA: I am going to request that be stricken from the record. He cannot testify as to what his condition is today. He can only testify as to what his condition was the last time he saw him which was in June of 1970.

THE COURT: Overruled.

MR. SERGI: The doctor can testify --

THE COURT: I overruled the objection, Mr. Sergi.

MR. SERGI: Thank you, I have no further questions.

THE COURT: If there is nothing further, thank you, doctor, you may come down.

(Witness excused.)

THE COURT: Has the plaintiff anything further?

MR. SERGI: The plaintiff rests.